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UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

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In re:

THE FINANCIAL OVERSIGHT AND PROMESA
MANAGEMENT BOARD FOR PUERTO RICO, Title III

as representative of Case No. 17 BK 3283 (LTS)

THE COMMONWEALTH OF PUERTO RICO,
et al., (Jointly Administered)

Debtors.

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New York, N.Y.
November 2, 2022
9:00 a.m.

Before:

HON. LAURA TAYLOR SWAIN,

Chief U.S. District Judge

APPEARANCES:

For the Financial
Oversight and Management
Board for Puerto Rico: Martin J. Bienenstock, Esq.
Brian S. Rosen, Esq.
Joshua A. Esses, Esq.
Matthew A. Skrzynski, Esq.

For the Official Committee
of Unsecured Creditors
(the "Committee"): Luc A. Despins, Esq.

For Assured Guaranty
Corp. and Assured
Guaranty Municipal Corp: William J. Natbony, Esq.

For Lilia Molina Ruiz: Jose Luis Novas-Debien, Esq.

For National Public
Finance Guarantee
Corporation: Robert Berezin, Esq.

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1 APPEARANCES, Continued:

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3 For The Puerto Rico
4 Fiscal Agency and
Financial Advisory
Authority:

Peter Friedman, Esq.

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6 For Fuel Line Lenders: Richard G. Mason, Esq.

7
8 Also present: Judge Shelley Chapman, Mediation Team Leader

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24 Proceedings recorded by stenography. Transcript produced by
25 CAT.

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1 THE COURT: Ms. Tacoronte, would you please call the
2 case?

3 THE DEPUTY CLERK: The United States District Court
4 for the District of Puerto Rico is now in session. The
5 Honorable Laura Taylor Swain presiding. Also present, the
6 Honorable Magistrate Judge Judith Dein. God save the United
7 States of America and this Honorable Court.

8 *In Re: The Financial Oversight --*

9 THE COURT: Ms. Tacoronte, we are getting a lot of
10 interference. I don't know whether it was something rubbing
11 the microphone or static. It was starting to get clearer, so
12 would you mind doing the proclamations again? I mean the
13 calling the case again, from the beginning.

14 THE DEPUTY CLERK: No problem, your Honor. Thank you.

15 The United States District Court for the District of
16 Puerto Rico is now in session. The Honorable Laura Taylor
17 Swain presiding.

18 THE COURT: That's much better, except now we've lost
19 you.

20 So would you do the *In Re: Financial Oversight Board*
21 part. So we've lost you.

22 Okay. Is somebody texting somebody to check this?

23 Alright. So those who are listening in, we're having
24 a little technical difficulty, so please be patient with us.
25 This happens when we connect across 1500 miles, and Court

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1 Solutions, and AT&T lines so that we maximize access.

2 Are they checking things on the Puerto Rico end?

3 THE DEPUTY CLERK: They disconnected, and they're
4 going to come back in.

5 THE COURT: Alright. It is being worked on, everyone.

6 THE DEPUTY CLERK: Testing.

7 THE COURT: We can hear you.

8 THE DEPUTY CLERK: Can you hear us now?

9 THE COURT: Yes.

10 THE DEPUTY CLERK: Our apologies, your Honor.

11 THE COURT: Thank you for coming back in.

12 So if you'd start with the caption of the case, that
13 would be great.

14 THE DEPUTY CLERK: Absolutely, your Honor.

15 *In Re: The Financial Oversight and Management Board*
16 *for Puerto Rico, as representative of the Commonwealth of*
17 *Puerto Rico, et al., PROMESA, Title III, Case No. 2017-BK-3283*
18 *for Omnibus Hearing.*

19 THE COURT: Thank you.

20 Welcome counsel, parties in interest, and members of
21 the public and press here in New York, those appearing or
22 observing here and in San Juan, and the telephonic
23 participants. It is good that we can now use both courtrooms
24 again for personal appearances and for observation of the
25 proceedings. I thank you for complying with the instructions

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1 of the court staff and encourage you to continue to comply with
2 all of the COVID-19 protocols so that we can stay safe.

3 I remind those present in the courtrooms and listening
4 on the phone lines that consistent with court and judicial
5 conference policies and the orders that have been issued, there
6 is to be no use of electronic devices in the courtroom to
7 communicate with any person, source, or outside repository of
8 information, nor to record any part of the proceedings. Thus,
9 all electronic devices must be turned off unless you are using
10 it to take notes, or refer to notes or documents already loaded
11 on the device, or you have prior Court permission to use the
12 device to communicate with others, and nobody's asked me for
13 that permission, so I trust you'll turn it off. All audible
14 signals, including vibration features must be turned off.

15 I'll be calling on each speaker during the
16 proceedings, and when I do, please identify yourself by name
17 for clarity of the record. After the speakers listed on the
18 agenda for particular matters have spoken, I'll provide an
19 opportunity for other parties in interest to address briefly
20 any issues raised during the course of the argument that
21 require further remarks. If you wish to be heard under these
22 circumstances, please raise your hand and, if you're in the
23 Puerto Rico courtroom, come to the podium, or if you're on
24 Court Solutions, state your name clearly so I'll call on people
25 in an orderly way if more than one person wants to be heard.

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1 Please don't interrupt each other or me during the
2 hearing. If we interrupt each other, it's difficult to create
3 an accurate transcript. But, as usual, having said that, I
4 apologize in advance, because I may interrupt you if you go
5 beyond your allotted time or if I have a question. And, of
6 course, if anybody has trouble hearing me or another
7 participant, please say something right away.

8 The agenda, which was filed as Docket Entry No. 22765
9 in Case No. 17-3283 is available to the public at no cost on
10 the Kroll Restructuring website, previously known as Prime
11 Clerk, for those interested. Although the company has been
12 renamed Kroll Restructuring, the Prime Clerk website addresses
13 and phone numbers are still operational.

14 I encourage each speaker to keep track of his or her
15 own time. The Court will also be keeping track of the time,
16 and speakers appearing here in New York will see a yellow light
17 at the podium when two minutes are remaining, and when time is
18 up, they'll see a red light and hear two buzzes. The speakers
19 appearing via Court Solutions will just hear two buzzes when
20 time is up. Here's an example of the buzzer sound.

21 Do we have an example of the buzzer sound?

22 THE LAW CLERK: One moment. I apologize. It's
23 counting up instead of counting down.

24 THE COURT: So should we skip the example of the
25 buzzer sound?

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1 THE LAW CLERK: Sorry, Judge. One moment. I guess
2 for now. Sorry.

3 THE COURT: Alright. So you'll either hear two buzzes
4 or I'll say thank you and you'll get the hint.

5 So if we need to take a break, the people who are on
6 the AT&T listen-only line should put their phones on hold
7 rather than hang up. Our timing is until 12:50 this morning,
8 if we need that much time, and, if necessary to resume, we
9 would resume from 2:10 and end at 5:00.

10 I may call a break this morning in the area of 11:00
11 or 11:30. During that break, people who are on the AT&T line
12 should put their lines on hold, not hang up and try to dial
13 back in, because they won't be able to.

14 As usual, our first item is status reports from AAFAF
15 and the Oversight Board, and as requested in the procedures
16 order, these reports have been made in writing in advance of
17 the hearing. They are available on the public docket at Docket
18 Entry Nos. 22773 and 22775 respectively in Case No. 17-3283. I
19 thank both the Oversight Board and AAFAF for the care and
20 detail reflected in their reports.

21 We'll begin by discussing the Oversight Board's
22 report.

23 Mr. Bienenstock, do you have additional comments?

24 MR. BIENENSTOCK: Good morning, Judge Swain. Martin
25 Bienenstock of Proskauer Rose, LLP, for the Oversight Board. I

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1 don't have additional comments in respect to the status report,
2 but of course I'd be happy to answer any questions the Court
3 has.

4 THE COURT: Thank you. I do have some questions.

5 So I see from the report that it was some two weeks
6 after the issuance of the Court order that the Board designated
7 its pre-existing municipal bond advisor as lead negotiator, and
8 your report says that there were consultations among the Board
9 and the attorneys and all that, but this must have been
10 something that you all saw coming, because the request had been
11 made. The time is short from the order until the deadline.

12 So I'd just like you to give me some more insight into
13 why it took so long to get someone from the home team, and I'm
14 going to ask you to go to the podium, because I think that's
15 the way the cameras are set up.

16 Thank you.

17 MR. BIENENSTOCK: Sure, your Honor.

18 A couple things that I hope will be responsive to the
19 Court's concerns that I'm inferring. First, no time was wasted
20 whatsoever in respect of the Oversight Board's efforts to put
21 together new proposals for the new situation created by the
22 existence of litigation on very significant issues and
23 determining how to negotiate them, et cetera.

24 Citibank functioned as it had been functioning, and as
25 far as the Board's processes towards the plan, there was no

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1 time wasted whatsoever. It was only the official designation
2 of Citibank that occurred, as your Honor pointed out, two weeks
3 later, and really that was because there were several, or least
4 a few people or entities who wanted to be considered for that.

5 The Board did what boards are supposed to do. They
6 considered the request and the options on an informal basis,
7 and then made the decision. But in terms of wasting time, no
8 time was wasted. Citibank continued functioning as it had
9 always been functioning, as did the Board in respect of the
10 PREPA restructuring.

11 THE COURT: Thank you.

12 Is the lead mediator empowered consistent with the
13 September 29 order?

14 MR. BIENENSTOCK: Absolutely, your Honor.

15 THE COURT: Now, have there been any substantive
16 communications with the mediation team since the September 29
17 order regarding plan terms to be proposed on December 1?

18 MR. BIENENSTOCK: Your Honor, I know there are some.
19 I don't have complete knowledge of all, but the mediation team
20 is in regular contact, to my understanding, with the chairman
21 of the Oversight Board, with some members of the Oversight
22 Board, as well as with Citibank, and sometimes with me. So the
23 communications have definitely continued.

24 I don't want to minimize, and I don't think we
25 minimize that in our status report, but just to be certain, I

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1 don't want to minimize the task that confronts everyone
2 involved, because, based on the outcome of the litigation,
3 there could be 8.3 billion, more or less, claims to deal with.
4 And so we have to take into account a lot of potential
5 outcomes.

6 We also, as we explained in the status report, we want
7 to provide bondholders who want to settle and eliminate the
8 uncertainty the opportunity to do so even if others want to
9 litigate. As your Honor knows and can imagine, some
10 bondholders have a low basis in their debt, some have a high
11 basis, some are the monolines, who simply signed on, and they
12 all have different risk tolerances. So it's complicated, but
13 it's been proceeding.

14 THE COURT: I certainly know and understand, not in as
15 granular detail, of course, as you and the Board and your
16 advisors do and the mediation team does, but I know how
17 complicated it is, which is why I took steps to keep the
18 continuity of the availability of the mediation team. I
19 expected that this would not be a process wholly internal to
20 the Board. I am glad to hear that you all are thinking about
21 different scenarios, but it was my expectation and intention
22 that there would be real substantive work with the mediation
23 team and intermediate communications with other parties in
24 interest going on in October, and now it's November 2nd.

25 The deadline is December 1, and certainly, from the

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1 outside, that looks like a potential problem in terms of the
2 Board's ability to comply with my direction to file a plan
3 that, in a realistic scenario or scenarios, could be
4 confirmable.

5 MR. BIENENSTOCK: Your Honor, in terms of filing a
6 plan with a lot of consensus, that will be very difficult, and
7 may not happen on December 1. But in terms of filing a
8 confirmable plan, that can happen, and we hope -- we hope
9 obviously, as things progress, that the briefing is completed
10 on the key summary judgment motions, that the parties will be
11 getting together formally, rather than the informal
12 communications that have taken place, that we will garner
13 support and deals as we go.

14 But to have it happen by December 1, I think no matter
15 how much activity there has been to date, and there has been a
16 lot, which I'll get into a slight bit, your Honor, is not very
17 plausible, because of what I said at the outset. We may have
18 8.3 billion, more or less, of liabilities to deal with. And
19 that sort of has to sink in, and more things have to happen
20 before deals can be cut.

21 But in terms of activity that's happened, I know on
22 a -- from my personal knowledge, I've had discussions with
23 counsel for the Committee, counsel for the Fuel Line Lenders,
24 others in my shop have had discussions with counsel for the
25 bondholders. And more importantly than the lawyers, frankly,

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1 City has been having discussions both with the mediators and
2 with different stakeholders on a regular basis.

3 Now, I don't want to give a false impression that
4 they're onto some type of deal and working out the details.
5 They're not. But all of the communications and whatnot that
6 have occurred were simply necessary predicates to get to the
7 next step.

8 THE COURT: I am monitoring the filings on the bond
9 rights issues, and of course we're also on top of Law 41 --
10 there are a lot of moving pieces on my side as well -- and the
11 other outstanding issues. It continues to puzzle me why the
12 Oversight Board now is focusing so much time and effort on
13 promoting a position in motion practice that's directly
14 contrary to the risk analysis that must have underlane the
15 Board's prior advocacy for the RSA and the prior proposals that
16 offered significant recovery to the bondholders.

17 Can you give me any insight into why there is such a
18 dramatic flip of the switch?

19 MR. BIENENSTOCK: Well, I can -- I certainly will give
20 your Honor the facts I am aware of, and I hope the Court finds
21 them to explain the issue your Honor has come up with. When
22 the case started, there had been a pre-PROMESA RSA that
23 provided for full or nearly full payment to all of the
24 bondholders and monolines. And the first thing that the Board
25 did was investigate that to see if it was either mandatory to

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1 go forward with it or appropriate to go forward with it, even
2 if it was not mandatory.

3 Then there was stay litigation that your Honor is
4 aware of, the request for the receiver, et cetera. Then came
5 the hurricane, and the First Circuit remanded if the
6 bondholders wanted to retry that in light of new circumstances,
7 and throughout the process of the Board -- first and foremost,
8 it wanted a deal. It wanted a consensual arrangement. And
9 obviously that cost more than a deal procured by litigating
10 claims.

11 Then when it made the RSA that your Honor is referring
12 to, what doesn't get any play in the papers, your Honor, in the
13 pleadings, is that that RSA had determination events that the
14 government was not entitled to deploy and the Board was
15 entitled to deploy. Those termination events were there from
16 the outset, and they actually could be triggered almost from
17 the outset, because there was a date by which there was a
18 deadline that we had to procure this Court's approval of
19 certain aspects of that RSA. And if that deadline was missed,
20 either party or almost any party could terminate the RSA, and
21 the bondholders knew that.

22 As your Honor will recall, at about the time of the
23 hurricanes, the Board did a study of whether the damage, et
24 cetera, to the business community, to the physical structure,
25 should change what PREPA could afford. It then proceeded from

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1 its findings at that point, and then, when the government
2 exercised the termination right, the Board looked both at the
3 facts it knew and new facts, and one of the new facts was the
4 ease with which both consumers and businesses in Puerto Rico
5 can convert from the electric power grid to solar. And that is
6 a real issue.

7 On the one hand, you want people to have the benefit
8 of solar, because it's -- the sun is free. On the other hand,
9 the more people and businesses who take the benefit of solar,
10 the more you have to charge everyone else to use the electric
11 power grid to cover the fixed costs. And it became more and
12 more apparent to the Board that, in the reality we're now
13 living with, where Tesla and everyone else is coming out with
14 solar roofs, et cetera, for business and for consumers, that
15 the economics that the Board had relied on previously were not
16 necessarily affordable.

17 And to that end, the Board looked to real experts --
18 I'm not talking about lawyers. I'm talking about real
19 experts -- to delve into what price can you charge before
20 you'll encourage too many people to convert to solar and things
21 of that sort, and how much of an additional burden are you
22 putting on the large portion of the population in Puerto Rico
23 that's very poor.

24 And we also, shifting gears, your Honor, we looked
25 very seriously at the issue the Committee raised that the debt

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1 wasn't valid. And as we've previously explained, with -- I
2 don't want to start an oral argument here on that debt, but
3 suffice it to say that we found that the Committee had a very
4 serious claim objection, and the Board, like any debtor, based
5 on the Bankruptcy Code, as incorporated into PROMESA, has a
6 duty to review claims and object to claims that should not be
7 allowed.

8 So I would say the answer to your question boils down
9 to a combination of changing circumstances on the ground,
10 especially the danger of converting to solar, and giving credit
11 to the Committee's issue on the recourse issue caused the Board
12 to take the position it's taking. And it believes it's right.

13 I should also say that, as your Honor knows, I think
14 it's four of the Board's seven members are new. And while that
15 is sort of an internal thing, the fact is the four members at
16 least, you know, each felt that they didn't want to be bound by
17 a prior board unless they thought that it was doing the right
18 thing. But in this case, I think all seven members want to
19 deal with the facts as they are now, and that really has lead
20 to the emphasis on the claim objection and the economics that
21 the Board is prepared to negotiate.

22 THE COURT: Thank you. That concludes the questions
23 that I wanted to put to you.

24 I am going to ask the lead mediator, Judge Chapman,
25 who's here to speak, but I'd just like to make a few contextual

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1 comments before I do that. And after Judge Chapman has spoken,
2 anyone else who wishes to speak should indicate they want to be
3 recognized.

4 So in order to hold a confirmation hearing in June,
5 which remains my goal, in order to extricate PREPA from these
6 Title III proceedings for the benefit of the people of Puerto
7 Rico, which should continue to be all of our focus, I do expect
8 to see a confirmable plan by December 1. I'm glad to see in
9 the report that the Board recognizes that it has to contemplate
10 multiple scenarios, because what I mean by a confirmable plan
11 is one that meaningfully and realistically contemplates
12 scenarios in which each party fails to prevail on their claims
13 in litigation to the extent that they expect to in order that,
14 on resolution of issues in the litigation, no matter what the
15 outcome is, we can move forward toward confirmation with
16 alacrity.

17 I see that and I hear again today that one of the
18 approaches you're thinking about is settle now, litigate later.
19 To the extent that means you might ask me not to move forward
20 with resolving the issues that are put before me in litigation,
21 that would not be consistent with my plan.

22 MR. BIENENSTOCK: Your Honor, is it okay if I respond
23 to that?

24 THE COURT: Yes, please.

25 MR. BIENENSTOCK: The Board could not agree more with

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what your Honor just said. I did not mean in any way to suggest that we would ask the Court to pause. What the status report means, when it says provide an opportunity for people to settle short of a litigation outcome, is when the briefing is finished, we anticipate the Court will set an oral argument.

I don't know that it's likely to be in December anymore, because that might be too close to Christmas, but it could be, or else it will probably be in January I would think, or somewhere around there. But whatever it is, and since it's possible, certainly plausible the Court may not decide it at the hearing, these are complicated motions requiring, you know -- your Honor knows better than I do what they require to resolve.

So what we meant in the status report is we'll provide bondholders, and maybe other creditors, Fuel Line Lenders maybe as well, but there are so few of them, they're probably going to all act together, but, in any event, we'll provide settlement opportunities calculated to have people opt in before the Court would rule. That's what we meant. Not that we would ask the Court to defer ruling, because, frankly, I mean, the quickest way to a confirmable plan is to get rulings on this.

We just want to give people the opportunity to settle, because the Board has always taken the position that it would rather have a settlement, and we see no reason not to. But we

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1 do not intend to use it to delay the litigation or the plan.

2 That's for sure.

3 THE COURT: I thank you for that clarification, and in
4 the same vein, I don't expect to see a place holder filed on
5 December 1. I want to see something that the Oversight Board
6 believes in good faith should move toward approval of a
7 disclosure statement.

8 I did expect, as I suggested before in my questions,
9 that mediation would be employed to facilitate substantive
10 engagement among the parties in the formulation of the plan
11 that will be filed on December 1, and if the requirement to
12 file a confirmable plan is, you've fleshed out my understanding
13 and my understanding of a confirmable plan isn't met every
14 possible way of reacting to that will be on the table.

15 But having said that, I don't know that the
16 responsibilities for achieving the goals and making the
17 compromises necessary to create the plan is solely the problem
18 of the Oversight Board. All of the stakeholders need to come
19 together and remain focused on the goal of a fair and legally
20 compliant resolution of the disputed claims that leaves the
21 people of Puerto Rico in a stronger position to go forward
22 toward a responsible future of growth and access to the credit
23 markets.

24 Mr. Bienenstock.

25 MR. BIENENSTOCK: Yes, your Honor. I think the Board

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1 has been attempting to proceed I think consistent with the
2 expectations your Honor just put on the record, but I can go a
3 step further on the plan, even though currently it's obviously
4 not been -- no plan has been -- no proposed plan has been
5 approved by the Board. But I can tell the Court this. Simply,
6 it's sort of more in the nature of a law of nature than
7 anything the Board has approved.

8 Since the plan has to take into account different
9 outcomes, I can tell the Court initially one -- we have an
10 impaired accepting class. This Court rendered a ruling in
11 favor of Vitol, where it assigned Vitol a 41 million-dollar
12 claim, and Vitol has agreed to take half of what the general
13 unsecured creditor class gets in satisfaction of its
14 41 million-dollar claim, so there's an impaired accepting
15 class.

16 Whether we have additional accepting classes will
17 depend, one, on whether and when some creditors decide to --
18 they're risk adverse and they want to settle at less than they
19 were originally asking for, but, two, the plan is then going to
20 have to say if the bondholders not only have an allowable claim
21 for their full amount but are also secured by all present and
22 future revenues. Then they get virtually everything, and they
23 will accept the plan, and the other parties may not, but it
24 will be confirmable. And if they don't have an allowable
25 claim, then, as you've said, everyone else will be paid so much

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1 it's hard to imagine it won't be very consensual confirmable,
2 and if they have an allowable claim but it's not secured, then
3 we're really looking more or less to treat everyone the same.
4 They'll all be unsecured claim holders.

5 Now, I realize that the Fuel Line Lenders and some
6 other stakeholders assert a seniority claim, so there may have
7 to be adjustments to settle this or a ruling on it. It's
8 briefed, but it's not currently one of the things that's in
9 play.

10 So I hope what I've described is consistent with what
11 your Honor was contemplating. I'm not sure there's another way
12 of doing it, but it's very serious. It follows the rules. And
13 I think it's, along the lines of what I described, I think is
14 the best the Board is going to be able to do at the end of the
15 day by December 1.

16 THE COURT: I appreciate your sharing that.

17 I would just add a law of nature overlay to that which
18 I trust is a part of the Board's consideration here. Even a
19 zero sum outcome on positions as to recourse and security, and
20 even though I know and expect you all respect my rulings,
21 there's always been a great deal of appellate activity in these
22 cases. So a win in the trial court isn't necessarily a win
23 that sticks, and, therefore, and you know it, even if you think
24 you've got the best argument in the world, there's always the
25 possibility for any player here of the aberrant result. And so

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I should think that both as a matter of realism and as a matter of, well, risk analysis, which is related I hope to real, simple, different scenarios -- would need to incorporate compromise one way or another. So if one wins, everybody will be happy and they'll consent to that, and if the other wins everybody will be happy. That's true, but that's also not super likely that you can get something that sticks.

So all of it is a question of negotiation, which is probably restating the obvious, but I want to see momentum here. I want to see real engagement, and I want to be in momentum toward June, which will be early in the next hurricane season. Here we are.

Mr. Bienenstock.

MR. BIENENSTOCK: Well, we have been considering obviously what to do about the prospect of appeals, because we know if -- when and if the Court has to rule on the summary judgment motions, obviously the losing party, especially if it's the bondholder, is going to appeal.

So in one sense that's another opportunity to settle, but it hasn't been lost on us that it's not all over, and, you know, whether we deal with it by delaying the effective date of a plan or, better yet, settling the appeal, we're conscious of that and we obviously want to settle it if we could. Also, I think it's implicit in what I was saying earlier, but just to make it clear, as I explained earlier, the Board has put a lot

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1 of the time and effort into trying to determine the right
2 amount it can increase rates, both in view of the people who
3 have to pay them and the solar issue of not to -- not to get
4 everyone off the grid. However that comes out, there's going
5 to be what the consultants call a resource envelope, which is
6 just all of the money we have, all of the debt we can issue to
7 pay -- to pay creditors.

8 The Board is really agnostic as to how that is
9 distributed. It's not trying to save money. It's not trying
10 to pay less than it can pay to creditors who are absorbing some
11 amount of losses. That's never been the Board's objective.
12 It's just to pay it all out. It's just a matter of how to
13 allocate it. And it doesn't have any favorites.

14 THE COURT: Thank you, Mr. Bienenstock.

15 So, Judge Chapman, would you go to the podium, please?

16 JUDGE CHAPMAN: Good morning, Your Honor. Can you
17 hear me?

18 THE COURT: Yes, I can.

19 JUDGE CHAPMAN: Alright. Your Honor, as you're aware,
20 Shelley Chapman, Willkie Farr & Gallagher, acting as the lead
21 mediator of the mediation team appointed by your Honor
22 April 25, 2022. I'm appearing on behalf of the entire
23 mediation team.

24 I have had an opportunity to talk to Judge Drain and
25 Judge Shannon about the report that was filed by the Board last

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1 evening, and have had additional conversations with the other
2 two mediators in preparation for today. As is usually the
3 case, your Honor, I have prepared remarks. Between
4 Mr. Bienenstock and your Honor's comments, most of what I had
5 to say has been covered. But I think it's important for me to
6 give you some of my thoughts on some of the things that
7 Mr. Bienenstock mentioned, and also some of the thoughts that I
8 had before this morning's hearing.

9 Let me say this at the outset. Nothing about this is
10 personal, but everything about it is personal. It's personal
11 in the sense that front of mind for the mediators every day is
12 getting this case to a resolution and achieving the goals as
13 your Honor outlined for the citizens of Puerto Rico. That's
14 front of mind for us every single day. So at times when things
15 aren't going swimmingly, it can appear that things are getting
16 personal, but they're not. We pride ourselves on being
17 professionals. So anything I say today I don't mean
18 personally.

19 Mr. Bienenstock started by talking to your Honor about
20 that the Board wasted no time in turning to new proposals for
21 the situation, and that was in response to your Honor's
22 question about what took two weeks to designate whom the
23 mediators felt was the obvious party to act as the lead
24 negotiator. Your Honor, we were frozen during that period of
25 time. There were no communications whatsoever.

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1 So while I have no doubt that members of the Board
2 were working hard, we had nothing to do. We had no one to talk
3 to. And two weeks in the grand scheme of things doesn't sound
4 like a long period of time, but suddenly two weeks has become
5 six weeks, and at this point there have been virtually no
6 substantive communications, virtually no substantive
7 communications.

8 The impaired consenting class plan that
9 Mr. Bienenstock mentioned to you was mentioned to us, and I'll
10 be blunt, your Honor. I did not believe that that was how the
11 Board intended to proceed. And I don't want to get into the
12 merits. I don't want to get into anything that would violate
13 mediation confidentiality.

14 THE COURT: I expect that you will avoid --

15 JUDGE CHAPMAN: I will avoid that at all costs, and if
16 anyone listening or your Honor thinks that I'm wandering too
17 close to that line, I trust you will turn this red light on
18 somehow. But there are many other constituents, I see some in
19 the room, others on the line, and they can talk more about
20 that. Primary concern to us is the looming December 1st
21 deadline.

22 Now, the various toggles based on litigation outcomes,
23 they've been known for a long time. This litigation has been
24 looming out there for a long time. So that's something that
25 smart bankruptcy restructuring practitioners can deal with, and

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1 I include Mr. Bienenstock very much in that category. So I
2 have no doubt that that work is going on.

3 I could sit down in a room with Judge Drain and Judge
4 Shannon. We could sketch that all out. We have seen no
5 proposals. If there is a proposal that has been shared with
6 any of the parties, as I stand here today, I am unaware of
7 that. So, therefore, I find it concerning as to how the Board
8 will indeed comply with the December 1st deadline.

9 I was glad, actually, to hear Mr. Bienenstock talk
10 about affordability, because however this litigation comes
11 out -- and we were also glad to hear general agreement that the
12 sooner your Honor rules on certain issues the better. And I
13 hate to put the burden on the Court, but there it is.

14 Yes, we need to talk about affordability, because we
15 believe -- the mediation team, that is, believes that however
16 the litigation comes out on the various issues that have been
17 identified, at bottom, this case may well turn on the issue of
18 affordability. We feel -- we've come to feel over the last
19 month that -- and, again, it's our feeling. It may not be the
20 reality, but we feel that we are being treated in some
21 circumstances as an adversary. We are no one's adversary. We
22 are seeking to be every mediation party's potential ally. We
23 have admittedly talked more to some than to others. We are the
24 only ones who know the things that we are told. We don't share
25 them with the other mediation parties. Those are the rules of

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1 the road.

2 So we had thought we were going to hit the ground
3 running and begin mediating. We asked a long list of
4 questions. We identified a long list of topics we believe
5 needed to be addressed in order to get at the question of
6 affordability and some other issues that would relate to plan
7 formulation.

8 We tried to have a meeting. We asked for a meeting to
9 be held yesterday. No go. We asked for a meeting to be held
10 next Tuesday. We hope that's a go, but we don't know for sure.
11 So everyone can look at the calendar. If we do have that
12 meeting next week, that's November 8th, then there's
13 Thanksgiving, and then it's my birthday on November 30th, but
14 December 1st is the following day.

15 So we're very concerned about how this is going to
16 play out. We're very anxious to have all the parties reengage.
17 Mr. Bienenstock himself said in pleadings that were filed
18 months ago "we can mediate and litigate at the same time." So
19 I see the litigation filings, and I've read them. We're here
20 to mediate. We're continuing to try to engage.

21 We don't feel much coming back from the Board. We're
22 hoping that will change dramatically, perhaps after today. You
23 asked Mr. Bienenstock some questions about, you know, how far
24 we've gotten here in terms of the litigation and what changed.
25 I'm not going to get into that, but I would say the following:

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1 The creditors have been kept waiting, but, more importantly,
2 the people of Puerto Rico have been kept waiting. And it's
3 just gone on too long.

4 Yes, certain facts changed in the wake of the natural
5 disaster that befell Puerto Rico, but many of the data sets,
6 issues, potential solutions have been well known for a long
7 time, and we just need to -- we need to get some traction here.
8 And I hope after today's hearings my phone will be ringing off
9 the hook.

10 Unless your Honor has any other questions, I think
11 I'll leave it there.

12 THE COURT: Thank you, Judge Chapman.

13 Mr. Bienenstock, did you wish to say anything before I
14 call on others?

15 MR. BIENENSTOCK: Your Honor --

16 THE COURT: I need you to go to the podium. Thank
17 you.

18 MR. BIENENSTOCK: Okay. Your Honor, to really respond
19 with -- I would have to weigh into the mediation privilege, so
20 I'd rather not. I'll just leave it at what I said earlier.

21 The Board is very proud of the way it's proceeded
22 doing everything the Board is supposed to do, and I don't want
23 get into the issues that Judge Chapman raised.

24 THE COURT: I will again reiterate that I expect the
25 facilities and abilities, talents and perspectives of the

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1 mediation team to be used meaningfully in the process of
2 getting to December 1, and I think that I am hearing accurately
3 from your remarks and from Judge Chapman's remarks that that
4 hasn't happened yet. I expect that to happen in the
5 formulation of a plan for December 1.

6 Thank you.

7 Now, sir, you raised your hand. So the person behind
8 Mr. Natbony. I'm sorry.

9 MR. MASON: Richard Mason, Your Honor.

10 THE COURT: Thank you, Mr. Mason.

11 MR. MASON: Richard Mason, Wachtell, Lipton, Rosen &
12 Katz for the Fuel Line Lenders.

13 Just very, very briefly, your Honor, so that the
14 record is clear, I did have a couple of conversations with my
15 friend Mr. Bienenstock, which I always appreciate, but the Fuel
16 Line Lenders have as yet received no proposal. Candidly, and I
17 appreciate the internal activity that the Board has undertaken,
18 the lack of activity externally, and just focusing on us, if
19 you will, during the month of October, given the tightness of
20 time, has been somewhat surprising.

21 Mr. Bienenstock spoke about economic issues, electric
22 rates, affordability. I think he used the phrase "resource
23 envelope." Your Honor might recall that in my remarks at our
24 last hearing I tried to emphasize that our group, and I presume
25 other creditor groups, needed to see analysis on those issues

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1 so that we could understand factually and deeply where the
2 Board was coming from. We have seen nothing since that hearing
3 in that respect. Hopefully, that will change.

4 And, lastly, just to mention, Mr. Bienenstock referred
5 to Vitol, which I think is a small creditor in the scheme of
6 things, as potentially being an impaired accepting class. I
7 think we would meet that with some pretty severe skepticism,
8 but, obviously, if that's the road he is going to go down,
9 we'll address it at the time.

10 Thank you, your Honor. That's all I have.

11 THE COURT: Mr. Natbony.

12 MR. NATBONY: Thank you, and good morning, your Honor.

13 THE COURT: Good morning.

14 MR. NATBONY: William Natbony from Cadwalader
15 Wickersham & Taft, on behalf of Assured.

16 On behalf of Assured, I just want to share and support
17 Judge Chapman's concerns and comments about timing and the
18 process that has been engaged in since your Honor amended the
19 order continuing the mediation. With respect to the timing
20 comments of both your Honor and Judge Chapman, Assured has been
21 standing by, and continues to stand by, and is ready and
22 willing to participate in good faith, continued negotiations,
23 as your Honor had contemplated. And, of course, with the
24 assistance of the mediation team.

25 As to the recourse arguments talked about by

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1 Mr. Bienenstock, we're going to leave those arguments obviously
2 to the papers that have been filed and will be filed, and we'll
3 address those in due course, and obviously have disagreement
4 with the Board on those issues.

5 Thank you, your Honor.

6 THE COURT: Thank you.

7 Mr. Friedman.

8 MR. FRIEDMAN: Your Honor, Peter Friedman from
9 O'Melveny & Myers on behalf of AAFAF.

10 The only thing we want to emphasize is one of the
11 things you said, which is getting this right, and we recognize
12 that there is a tremendous desire for consensus and expedition,
13 but we also recognize that this -- the result of this process
14 will cost money that will tax the people of Puerto Rico, who
15 have a 56 percent poverty rate I believe, is twice as poor as
16 Mississippi, already has high consumer rates -- commercial
17 rates compared to retail rates, which is the inverse of
18 virtually every state in the country.

19 The consequences are profound, and I think just from
20 public material the differences of what may be affordable, what
21 people's legal rights are are vast. And so while we understand
22 that everybody wants to get to consensus, it has to be a deal
23 that works for the realities of Puerto Rico. And that's
24 difficult and that's expensive.

25 And all the talking in the world in mediation and good

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1 intentions to get to a deal may get people closer but may not
2 actually be able to bridge that gap, at least from the
3 government's perspective as to what truly is in the best
4 interest of Puerto Rico, so that's where we stand.

5 We have tremendous respect for all the professionals,
6 particularly the mediation panel, and certainly don't view them
7 as our adversary, but where we stand comes not from a place of
8 wanting to be obstreperous or difficult but to see the best
9 interest of the future of Puerto Rico served. And our
10 viewpoint may be different, and it's only meant to serve that
11 interest.

12 Thank you, your Honor.

13 THE COURT: Thank you, Mr. Friedman.

14 Mr. Berezin.

15 MR. BEREZIN: Yes, your Honor.

16 THE COURT: Thank you.

17 MR. BEREZIN: Your Honor, excuse me, Robert Berezin,
18 Weil, Gotshal & Manges, LLP, on behalf of National Public
19 Finance Guarantee Corporation.

20 Your Honor, I understand what it's like to fall in
21 love with arguments. The Board seems to have fallen hard for
22 the Committee's non-recourse argument, as if it's some kind of
23 alchemy transforming eight billion dollars in lawful debt into
24 thin air. This is indeed a sudden and new development, and we
25 fear the mediation will lay fallow absent some change.

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In that regard, your Honor, we remind the Court of the pending but stayed motion to lift the stay to appoint a receiver. We agree with Mr. Friedman that the people of Puerto Rico must remain at the center of these proceedings, and we believe a receiver will drive lower costs and more reliable power for the people of Puerto Rico. So it is urgent for that reason alone, but in addition, to resolve these Title III cases, the receiver litigation will put front and center whether a receiver has a right to assume and exercise PREPA's property rights until all defaults are cured. Whether PREPA granted bondholders an interest in property through the receiver company, whether that right is binding on all PREPA creditors due to the Authority Act's codification of the receiver right granted to bondholders.

Your Honor, make no mistake, National wants a consensual resolution. National is committed to mediation. National has stood and will stand ready to engage with the Board and AAFAF in mediation. But the receiver litigation would be a wake-up call required, in our view, to realize the promise of mediation.

Thank you, your Honor.

THE COURT: Thank you.

Anyone else in this courtroom? I don't see anyone at the podium in San Juan.

Is there anyone who's on the phone who wanted to be

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1 heard? If so, unmute and state your name. You have to unmute
2 on both the Court Solutions dashboard and on your phone to be
3 heard.

4 Alright. Thank you. I hear no further --

5 MR. DESPINS: Your Honor.

6 THE COURT: Oh, yes.

7 MR. DESPINS: I'm sorry. This is Luc Despins for the
8 Committee. I apologize.

9 May I be heard at this time?

10 THE COURT: Yes. Good morning, Mr. Despins.

11 MR. DESPINS: Good morning, your Honor. I apologize
12 for not being there in person. I certainly didn't expect the
13 hearing to take the turn it has taken, so obviously my
14 apologies for not being there. But very briefly, your Honor,
15 the Committee is really concerned about -- when we hear issues
16 of expediting in the sense that everyone has to be in favor of
17 expediting an exit from these Chapter -- Title III cases.
18 That's apple pie.

19 But from the Committee's perspective, we've been
20 asking, we've been pushing this issue for three years plus, so
21 we're really concerned about the fact that expedition could
22 take precedence over a ruling on the merits, because we believe
23 obviously in the merits of our claims that we've articulated
24 three years ago. So that's the first point.

25 The second point is the Committee objects in the

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1 strongest terms possible to the turn that the mediation has
2 taken here where you have mediators showing up in court,
3 reporting to the Court on the behavior of some parties. Not us
4 by the way, but I'm fearing that I'll be next. But not us, but
5 the Board. The Board refused to have a meeting this week. The
6 Board didn't do that. The Board didn't do that.

7 I just don't understand how that is possible, and the
8 question I have is, is that a two-way street? Meaning, can the
9 Committee raise the engagement or no engagement of the
10 mediation team with respect to some issues? I expect not,
11 because that would be breeching the mediation privilege.

12 On the other hand, it seems that it's fair game for
13 the mediation team to appear and to criticize the position in
14 mediation of some parties, and I'm really concerned about that.
15 The Board can fend for itself. I don't care about the Board,
16 but I care about the fact from a process point of the view.
17 This could be the Committee next. So we are really concerned
18 about that.

19 And the last point is that, you know, the people of
20 Puerto Rico, and of course the creditors in our group, deserve
21 an answer to an issue that is fundamental here, because this is
22 not a decimal point impact on them. This could have a huge
23 impact on the people of Puerto Rico. And, therefore, when
24 people say that that should be the primary concern, we agree,
25 but that turns on -- it's not necessarily that expedition is

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1 what they need. They need to know whether they indirectly
2 should be repaying this debt that is a non-recourse claim.

3 So I'm not going to argue the merits of this, but I
4 wanted to express these concerns to your Honor. Thank you very
5 much.

6 THE COURT: Thank you, Mr. Despins.

7 Judge Chapman wishes to be heard again, and as she
8 walks to the podium, I will reiterate that the Court's
9 intention is to decide what is placed before the Court and to
10 do that carefully and as intelligently as the Court can and as
11 fairly and accurately as the Court can until and unless the
12 issues are taken off the table or superseded by events.

13 Judge Chapman.

14 JUDGE CHAPMAN: Your Honor, thank you for giving me
15 some additional time. I said at the outset of my remarks that
16 nothing that I was about to say was personal, but unfortunately
17 Mr. Despins made it personal and directed some pretty sharp
18 criticism at the mediation team, which I have to tell you I
19 believe is entirely unfounded. I did not mention the
20 Committee.

21 I can report to the Court that there has been
22 communication between Mr. Despins and a member of the mediation
23 team. I did not view any of my remarks as overstepping the
24 appropriate line and breeching mediation confidentiality. Your
25 Honor asked the Oversight Board to file a status report on the

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1 status of the mediation. They did so. Mr. Bienenstock gave
2 you additional details. I came to the podium and I provided
3 you with our version of those same facts.

4 Mr. Despins can speculate that somehow we're going to
5 have him next on a list. Nothing could be farther from the
6 truth. I have in my brief case right now an analysis of the
7 unsecured claims. We're very aware of the important role that
8 he and his constituents play. And I just could not remain
9 seated in the face of what I viewed as a troubling and personal
10 attack on the manner in which the mediation team has been
11 proceeding.

12 To the extent that your Honor believes that we have
13 done anything inappropriate, I trust and expect that your Honor
14 will advise us, but we intend to soldier on and not sacrifice
15 anyone's interests in the interest of expedition.

16 Thank you, your Honor.

17 THE COURT: Thank you, Judge Chapman.

18 I believe that Judge Chapman and the others who have
19 spoken today have been careful not to go to the substance of
20 any communications in mediation. My mediation order does
21 contemplate reporting by the mediation team on non-substantive
22 issues as the mediation team believes necessary. It is no
23 secret that certain parties are not happy with the sequencing
24 of mediation. That's not a secret, and it is a procedural
25 point.

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1 Judge Chapman said that she didn't intend anything to
2 be personal, and we all need to make sure that things are not
3 personal but, rather, are directed towards a proper resolution
4 of the very, very serious issues that are before the parties in
5 interest and ultimately before the Court as to legal issues,
6 particularly on rights of credits. But, ultimately, the Court
7 is looking forward to having the very weighty responsibility of
8 determining whether a plan is consistent with the requirements
9 of law and can be confirmed as one that is legal under PROMESA
10 and structured so as to improve the situation of the people of
11 Puerto Rico and allow Puerto Rico to go forward.

12 So I thank you all for your serious engagement with my
13 questions about the status of plan formulation and of
14 mediation. I hope that everyone has heard things that will be
15 significant in their determinations as to how to proceed
16 between now and December 1, and that there will offline be
17 meaningful and substantive work and communications on the
18 mediation front.

19 So now I will turn to the AAFAF report.

20 Mr. Friedman, is there anything further from AAFAF to
21 that report?

22 MR. FRIEDMAN: No, your Honor. Nothing further.

23 Peter Friedman from O'Melveny & Myers on behalf of
24 AAFAF. We have nothing further.

25 THE COURT: Thank you. I had no questions for AAFAF.

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1 Is there anyone with comments on AAFAF's report? I
2 don't see anyone at the podium in San Juan. No one has raised
3 hands here. I'll wait a couple of seconds for any comments
4 from the phone line.

5 Alright. I believe that there are no further comments
6 with respect to AAFAF's report, and so we will now proceed to
7 the contested matters.

8 The first agenda item II.1 is the administrative
9 expense claim motions by the various litigation plaintiffs. So
10 there is a group of five administrative expense claims in which
11 the claimants are represented by Ivonne Gonzalez-Morales. The
12 first of which is the Carmen Socorro Cruz-Hernandez litigation.
13 The motion is Docket Entry No. 21195 in Case No. 17-3283. The
14 second arises from the Madeline Acevedo-Camacho litigation, and
15 was filed as Docket Entry No. 21194. The third is arising from
16 the Francisco Beltran-Cintron litigation, which is Docket Entry
17 No. 21224. The fourth arises from the Abraham Gimenez
18 litigation, which is Docket Entry No. 21227; and the fifth
19 arises from the Acevedo Arocho litigation, which is Docket
20 Entry No. 21230.

21 So we have an allocation of 15 minutes for the opening
22 argument by Ms. Gonzalez-Morales.

23 Ms. Gonzalez-Morales, are you there?

24 MS. GONZALEZ-MORALES: Yes. Good morning, Your Honor.

25 THE COURT: Good morning.

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1 MS. GONZALEZ-MORALES: I address the Court, Ivonne
2 Gonzalez-Morales, on behalf of the group of employees stated.

3 Can I start?

4 THE COURT: Yes, please.

5 MS. GONZALEZ-MORALES: Okay. Before entering to the
6 merits, we must briefly highlight the fact that all claimants,
7 as regular and former government employees, hold back wage
8 claims accrued during the ordinary course of employment. Of
9 the five cases identified in these different motions, only one
10 have a judgment. That is the case of Carmen Socorro
11 Cruz-Hernandez.

12 And in that judgment, it was determined that the
13 Commonwealth, Family Department and other instrumentalities
14 broke the salary -- violated the federal and state wage laws
15 when implemented the minimum wage and disregarded the uniform
16 retribution -- regulation, which the employees confronted the
17 situation that they were paid up to the 19 pay scale the same
18 salary of the laborers and workmen, to the extreme that in
19 1996, 19 -- the first -- the employees assigned to the first 19
20 pay scales were receiving the same salary of laborers and
21 workers.

22 In addition, is important to bring to the
23 consideration of the Court that in the -- in the petition of
24 bankruptcy, the government of Puerto Rico made clear that it
25 was going to continue paying employees the -- in the regular

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1 course of employment the pertinent wages. Also, there is --
2 the claimants confront the situation that although they qualify
3 for the transferring of the claims to the administrative claim
4 reconciliation procedures, they have been discriminated, and,
5 to this day, they have not -- their claims have not been
6 considered in those procedures, which contradicts the very
7 purpose of the claim review and process of the Title III cases.

8 With this conduct, the Oversight Board is failing to
9 take affirmative action and denies claimants the opportunity of
10 settling their claims and obtain full payments of the
11 meritorious employee wage disputes and prevent frivolous
12 litigations. Once is that clarified, in the case of Carmen
13 Socorro Cruz-Hernandez, although most of the judgment have been
14 paid, there are some outstanding payments that have not been
15 done and are identified in Exhibit Three.

16 Since claimants have not provided service to the
17 employment contract, the service rendered by the Family
18 Department would have been substantially effected. Therefore,
19 under section 503(b)(1)(A) of the Bankruptcy Code, they submit
20 that they are -- they should be granted administrative expense
21 for the wages earned and not paid, especially because they have
22 established that the Commonwealth, although they have
23 reasonable problems, they submitted to the Court evidence that
24 -- of the bank accounts, and that permits the employees to have
25 their wages paid, plus have established that by paying the

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amount that they claim, the government can continue operations. Therefore, we cannot imagine why Congress would amend section 503(b)(A) to authorize priority claims and avoid a statutory interpretation that would lead to an absurd result.

The Bankruptcy Code clearly responds to the public outcry of terminating abuses by the -- of the bankrupt employers and does not make reference to the judgment entered prior or before the rule, also, since they have sufficient funds to continue operating. Most notably, the Commonwealth in its opposition does not consent that movants provided pre-petition services and the Commonwealth received substantial benefits for the services. Neither contests that -- the fact of the Commonwealth's obtained unjust enrichment, they seek the payment of the administrative expenses applications.

In regards the four cases that are pending determination, is important to bring to the Court's consideration that although the administrative expense claims stem from identical litigation claims with final judgment, in the case of Carmen Socorro, Nilda Agosto, Juan Perez-Colon, and Janet Abrams, which are pending determination from this Court.

THE COURT: Ms. Gonzalez Morales, pardon me. I'd like to ask you a question.

Do you agree that an administrative expense claim must be based on something where liability has already been determined? You've just said that in four of these cases, the

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1 arguments and the claims would be the same as in Carmen
2 Socorro, but you've also I think just acknowledged that there
3 hasn't been a determination of liability or a judgment in any
4 of those four cases yet. So doesn't that fact alone mean that
5 I cannot recognize the claims in those four cases as
6 administrative claims at this point?

7 MS. GONZALEZ-MORALES: Your Honor, we have to make a
8 clarification. The claims have been bifurcated in pre-petition
9 claims and post-petition claims. The post-petition claims,
10 since they address the practice of unpayment violations of law
11 and is a fact that is not in controversy that the Governor of
12 Puerto Rico have not paid claimants the just, regular rate that
13 they deserve for the post-petition claims, they are entitled
14 for payment, because they have not been paid the wages that the
15 Puerto Rican law requires. So --

16 THE COURT: So has there been --

17 MS. GONZALEZ-MORALES: -- with that said --

18 THE COURT: Has there been a determination by a court
19 that the wages paid post-petition are insufficient?

20 MS. GONZALEZ-MORALES: Well, we refer to the four
21 judgments that we have just addressed: Carmen Socorro, Nilda
22 Agosto, Juan Perez-Colon. There are four cases, four judgments
23 that have addressed the issue of the Commonwealth violations on
24 salaries of the claimants. So, for the post-petition claim,
25 there is no obstacles to concede and grant movants their

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1 request for administrative expenses, because their work has
2 produced benefits to the state.

3 In regards the pre-petition claim that all together
4 around \$200 million, when you add up the claims, movants --
5 since there's not a judgment, movants reserve the right to
6 litigate these cases, and if succeed, to come again and claim
7 the administrative expenses. It's important to clarify that
8 movants are also requesting this Court to order to -- a
9 creation of a special fund to guarantee these administrative
10 expenses if granted by a court. However, movants also request
11 this Court to order a mediation process or some kind of
12 procedures where the Oversight Board will meet with claimants
13 in order to resolve this controversy about the wages.

14 We have a real concern, your Honor, because when you
15 see the result of the wage violations incurred by the
16 Commonwealth of Puerto Rico, and if you notice the amount of
17 claimants originally accumulated in -- for instance, in the two
18 cases from the Family Department, Madeline Acevedo and
19 Francisco Beltran, they were originally about 7,000 employees.
20 However, to this date, only 2,000 employees are still working.
21 That means that over 70 percent have left the government. This
22 will -- this is creating a severe administrative problem for
23 the government agencies and services that the government should
24 bring to the Commonwealth of Puerto Rico citizens, and that is
25 why we are -- have bifurcated the administrative expense --

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1 (Sound played)

2 MS. GONZALEZ-MORALES: -- petition in a pre-petition
3 and post-petition in order to solve the problem of wage theft
4 that the Government of Puerto Rico have been incurring.

5 I don't know whether the judge have another question.

6 THE COURT: Well, the time has run out. We heard the
7 two buzzes.

8 (Sound played)

9 THE COURT: So if you want to wind up in a sentence
10 your remarks, then I will turn to the speaker for the Oversight
11 Board.

12 MS. GONZALEZ-MORALES: Well, we pray for the granting
13 of the administrative explained -- as we have expressed in our
14 prior memorandums. Thank you, your Honor.

15 THE COURT: Thank you, Ms. Gonzalez Morales, and I
16 will call on you for a reply argument after Mr. Rosen speaks
17 for the Oversight Board.

18 MR. ROSEN: Good morning, Your Honor. Brian Rosen of
19 Proskauer Rose on behalf of the Oversight Board, as the
20 representative of the Commonwealth of Puerto Rico, pursuant to
21 Section 315 of PROMESA.

22 Your Honor, simply stated, this hearing is a lot like
23 Ground Hog Day. As you are keenly aware, you have addressed
24 these litigations and the asserted claims twice before, once on
25 August 4th of 2021 in connection with the 345th Omnibus

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1 Objection, and then again on Ms. Gonzalez' motion for
2 reconsideration of your order sustaining the 345th Omnibus
3 Objection. And while these arguments that Ms. Morales is
4 raising today are repackaged, the arguments raised in these
5 five motions are essentially the same. And to take what Yogi
6 Berra once said, your Honor, this is like deja vu all over
7 again.

8 These five motions, your Honor, are seeking the same
9 relief in a slightly different form as she came before you
10 before. The first motion on the agenda, your Honor, is the one
11 that Ms. Morales was referring to as the one that maintains a
12 judgment and asserts liability only for pre-petition services
13 for some of the plaintiff employees.

14 The remaining four motions, your Honor, are filed by
15 the moving groups in four litigations in which the movants
16 acknowledge that they do not have a final judgment of liability
17 against the Commonwealth. Rather, movants assert that they are
18 similarly situated to plaintiffs in other litigations in which
19 a judgment has been entered. These motions and the
20 corresponding litigations contend that they are both pre- and
21 post-petition amounts owed.

22 Your Honor, you caught that -- excuse me. You raised
23 that question very clearly, and you got the answer from
24 Ms. Morales that there really isn't a judgment entered. And as
25 I'll go later on, your Honor, the Commonwealth very adamantly

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1 contests the liability associated with those litigations. As
2 asserted in those, your Honor, the Commonwealth has raised
3 certain affirmative defenses, and the issues are on appeal to
4 the Puerto Rico Supreme Court. They relate to, among other
5 things, whether the claims asserted by the plaintiffs are
6 barred by laches or by a three-year statute of limitations and
7 whether the lower court erred in denying the motion for summary
8 judgment related to the cause of action.

9 It must be noted, your Honor, that the Commonwealth
10 considers any dispositive judgment to be issued by the Puerto
11 Rico Supreme Court in favor of the Commonwealth on those issues
12 to similarly apply to the other pending actions. In fact, this
13 was one of the reasons, your Honor, that the Commonwealth
14 opposed the lifting of the stay with respect to those actions.

15 Your Honor, as I said, with respect to all the motions
16 asserting that pre-petition services are entitled to admin
17 expenses, we have seen this before. Movants are making the
18 same or similar arguments previously made in connection with
19 the 345th Omnibus Objection, and it's the same arguments, your
20 Honor, that you addressed in your motion -- or, excuse me, in
21 the motion for reconsideration and your order wherein you
22 denied the motion for reconsideration, addressing the issues
23 under 503(b)(1)(A)(ii), your Honor.

24 In ruling that in the denial of the reconsideration,
25 your Honor, the Court recognized that movants had not put forth

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a theory in which expenses had accrued and continued to accrue post-petition, and that they had failed to persuade the Court that 11 U.S.C. 503(b)(1)(A) applied to their claims. Your Honor, the movants here again argue that pre-petition portions are allowable as admin expenses pursuant to section 503(b). And the theory they espouse now is that they provided a benefit to the Commonwealth through their services, making it possible for the agencies to continue uninterrupted service, but they go farther, your Honor.

In connection with the most recent application, they again stress section -- or subsection (A)(ii), which the Court did address briefly in the motion for reconsideration order. And they're claiming that there's an exception to the post-petition benefit rule.

But, your Honor, the theories that they put forward ignore the plain statutory language of the Bankruptcy Code requiring that the payment be, quote, attributable to the post-petition period. The law is clear that without a post-petition nexus or a connection entitlement to payment does not qualify for admin expense priority.

So what do they do? What does Ms. Morales attempt to do? She provides an admin expense claim motion and she deletes a piece of the statute. She deletes the portion where it talks about being attributable to that activity.

Your Honor, she tries to claim that there is an

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exception to the rule and -- by citing cases which focus on WARN Act or severance liability, but that's not the situation here. Those causes where there might have been some responsibility, some admin expense claim, your Honor, were in the context of WARN Act or severance where there might have about been an obligation which actually accrued post-petition, not pre-petition. Your Honor, here there is no such obligation.

So, your Honor, for the same reasons that the Court ruled in the 345th Omnibus Objection that they should be reclassified to general unsecured claims, for the same reason that the Court denied the motion for reconsideration, the Court should deny the request for the administrative expense claim status here with respect to those which were pre-petition activity.

With respect to the post-petition periods, your Honor, that are asserted in the motion, the Commonwealth has acknowledged that services provided during those periods may be entitled to admin expense priority, but the liability and the quantification is in bona fide dispute, as the Court recognized earlier. And it rests, your Honor, on the ruling that is hopefully to come down by the Puerto Rico Supreme Court in the Acevedo-Arocho action to which I referred before.

And as I said, your Honor, unlike the other cases where there is a judgment, the Commonwealth courts have not

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1 determined there to be any liability as to the movants
2 asserting post-petition liability. Movants in those motions
3 consider themselves similarly situated to plaintiffs in other
4 cases that do have a judgment, but that is a big difference,
5 your Honor.

6 Furthermore, your Honor, the four groups of plaintiffs
7 that assert post-petition services are from those cases.
8 They're related to defenses -- the Commonwealth's defenses of
9 laches and statute of limitations, and if the Commonwealth were
10 to be successful in those defenses before the Supreme Court and
11 then possibly on remand, it would consider those issues to be
12 similarly dispositive in all the other actions and there would
13 be no liability at all, your Honor.

14 THE COURT: Now, the Commonwealth would consider it
15 that way, but that wouldn't necessarily preclude the plaintiffs
16 from trying to litigate it and obtain a different result.

17 MR. ROSEN: Absolutely, your Honor. I agree.

18 Your Honor, Ms. Morales has also raised in her
19 comments something about either the ACR or the ADR processes
20 that the Court has authorized in these cases, and, your Honor,
21 we have always held major litigation cases to the side.

22 In this case, Ms. Morales is seeking, as she says,
23 hundreds of millions of dollars of liabilities. And it's not
24 something which is the run of the mill type of claim where
25 someone says, my pension benefit should be \$100, not \$60 like

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1 you say. Those are the types of things that we've been dealing
2 with, your Honor, in the ACR processes.

3 Likewise, in the ADR, your Honor, these claims are so
4 sizable, and they are along the -- significantly along the path
5 in litigation in connection with the Puerto Rico Supreme Court
6 action that we would wait until there were some sort of
7 determination by the court, the Puerto Rico Supreme Court, so
8 we could, if in fact it's doable, proceed to ADR or proceed to
9 mediation. But until Ms. Morales moves off of her position as
10 she stated here that she demands full payment, I don't think
11 there's something that anyone can do, whether the Commonwealth
12 or the Oversight Board, until we have that determination by the
13 Puerto Rico Supreme Court.

14 So, your Honor, for the same reasons the Court has
15 ruled in connection with the 345th Omnibus Objection and in the
16 motion for reconsideration, we ask the Court to again deny the
17 five motions which are before the Court. Unless the Court has
18 any further questions, I don't have anything more.

19 THE COURT: I have a couple of questions for you
20 before you step away. The movants assert that claims totaling
21 about two-thirds, or 635,000 of the slightly over one million
22 dollar Socorro Cruz-Hernandez judgment qualify as convenience
23 claims in class 68 under the Commonwealth Plan, and do you
24 agree? And to the extent that you agree, are those claims
25 being processed and paid in accordance with the Commonwealth

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1 Plan?

2 MR. ROSEN: Your Honor, we have not had an opportunity
3 to determine whether or not those are, in fact, convenience
4 class claims. We will try to do that with Alvarez & Marsal.
5 But I would point out that the Commonwealth also disputes that
6 that judgment, which gave rise to the claim itself, is final,
7 and that they do assert that they do have additional rights
8 that they may pursue.

9 So we will endeavor, your Honor, to get an answer to
10 your question about the convenience class, but I will say that
11 the Commonwealth is still reserving its rights with respect to
12 the balance of the money that is owed.

13 THE COURT: So does this implicate the dispute as to
14 whether the automatic stay stayed the deadline to appeal the
15 judgment in Socorro Cruz-Hernandez?

16 MR. ROSEN: Your Honor, the Commonwealth is taking the
17 position, as reported to us, that the automatic stay is still
18 in effect, and that's why they have not pursued any additional
19 appellate rights right now.

20 THE COURT: Alright. Some of the -- well, the motions
21 were filed as proofs of claim. Are you going to stand on
22 procedure or will you treat the motions as proofs of claim to
23 which you'll react appropriately on the claims processing side?

24 MR. ROSEN: Your Honor, if it is easier for the Court,
25 I will not stand on procedure or ceremony here. We still do

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1 have these motions pending -- excuse me, these proofs of claim
2 pending as, of course, general unsecured claims based on the
3 classifications earlier. We still will object to those claims.
4 But on the admin expense claims, your Honor, if the Court were
5 to rule on those today without further objection being
6 interposed, we would accept that.

7 THE COURT: Thank you.

8 So now I'll call Ms. Gonzalez-Morales back.

9 MR. ROSEN: Thank you, your Honor.

10 THE COURT: Thank you.

11 MS. GONZALEZ-MORALES: First of all, we have to object
12 the Oversight representative when mention that the claims of
13 administrative expenses filed are subject to review by the
14 Puerto Rico Supreme Court. For that purpose, we included in
15 our -- as Exhibit B, the answer to the denial of the legal sale
16 given by the Commonwealth where does not inform the theory that
17 is informing this Court today.

18 The injunction is requested to be maintained because
19 of the complexity, because the cases are in an initial state,
20 and, second, because of the complexity of the action, and the
21 cause associated with litigating those claims. Nowhere in the
22 answer to the request of lift of stay that is pending before
23 the Court arises the argument -- the new argument that the
24 Commonwealth is presenting to this Court.

25 The Acevedo-Arocho claim refers to a special action

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1 that some auditors and tax specialists of the Treasury
2 Department had, not -- that special claim was not stayed by the
3 Court of First Instance. Therefore, is misrepresenting this
4 Court about the pending Supreme Court decision will affect the
5 administrative expense petition. So we request this Court to
6 dismiss that argument, because it's not faithful because of the
7 record of the case, and we submit our petition of
8 administrative expense as we previously requested.

9 Thank you, your Honor.

10 THE COURT: Thank you.

11 We will now take a ten-minute break. So we will
12 resume the proceeding -- actually, it will be a 13-minute
13 break, so we'll resume the proceeding at 11:30 a.m.

14 People who are listening on the AT&T line, don't hang
15 up. Put it on hold or just put the phone down on the table.

16 Mr. Friedman, before we go.

17 MR. FRIEDMAN: Your Honor, may I be excused? I don't
18 think AAFAF has anything further to say. I don't believe any
19 of the other matters require AAFAF to speak.

20 THE COURT: Just in case anyone did not hear
21 Mr. Friedman on the speaker, he asked to be excused because
22 AAFAF doesn't need to appear in connection with any of the
23 other motions, and that request is granted.

24 MR. FRIEDMAN: Thank you, your Honor.

25 THE COURT: Good to see you, Mr. Friedman.

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1 MR. FRIEDMAN: Thank you, your Honor.

2 THE COURT: Alright. We are adjourned to 11:30.

3 Thank you.

4 (Recess)

5 THE COURT: Please be seated, and thank you for your
6 patience.

7 I have one more question for Mr. Rosen in connection
8 with the previous agenda item, and that's a follow-up to your
9 response, Mr. Rosen, to my question as to whether the Oversight
10 Board would treat the motions filed on behalf of these wage
11 claimant groups as the administrative claims rather than
12 raising an objection that they were filed as motions, rather
13 than as claims. And you said yes, but then your response
14 seemed to suggest that you would consider a denial of the
15 relief sought today as a complete resolution or expungement of
16 those claims as administrative claims.

17 Is that what you meant?

18 MR. ROSEN: Your Honor, I thought what you were asking
19 was in as much as these were requested to be treated as admin
20 expense claims, a determination by you would be dispositive of
21 that. That would still leave, however, what we always perceive
22 to be the general unsecured proofs of claim that we would still
23 be dealing with.

24 THE COURT: Thank you for making that clear.

25 Alright. I will now make my oral ruling with respect

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1 to these applications.

2 Before the Court are five separate motions seeking
3 allowance in payment of administrative expense claims, which
4 are at Docket Entry Nos. 21194, 21195, 21224, 21227, and 21230
5 in Case No. 17-3283. I will call these docket entries the
6 "Motions," and the various movants thereto I'll refer to as the
7 "Movants." The Financial Oversight and Management Board of
8 Puerto Rico has objected to each of the motions, see Docket
9 Entry Nos. 21640 through 21644.

10 The Court has carefully reviewed the relevant
11 pleadings and listened to the arguments today. The Court now
12 makes its oral ruling as to the motions and reserves the right
13 to make non-substantive corrections in the transcript of the
14 ruling.

15 Movants seek immediate payment of certain prepetition
16 wage claims as administrative expenses, as well as "comfort
17 orders" that over \$200 million in asserted pre- and
18 postpetition claims that are the subject of pending actions
19 will be given administrative expense priority. And they ask
20 the Court to order the Commonwealth to create a reserve of
21 those funds to be available for immediate payment when final
22 judgments are rendered in those cases. Movants have also filed
23 the instant motions as proofs of claim. For the reasons that
24 follow, the Court denies each of the Motions for allowance of
25 Movants' asserted administrative expense claims at this

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1 juncture, as well as all of the requested ancillary relief.

2 The Movants' asserted claims are based upon multiple
3 underlying actions in which they seek damages from several
4 departments of the Commonwealth, including the Treasury
5 Department, and the Department of Transportation and Public
6 Works. All but one of the underlying actions are currently
7 pending before the Commission for Appeals for Public Service,
8 or CASP, before the Puerto Rico Court of First Instance or
9 before the Puerto Rico Supreme Court. The gravamen of the
10 several actions is that the Movants allege that they are owed
11 back pay due to a salary shortfall caused by the Commonwealth
12 not properly adjusting wages following its implementation of
13 the federal minimum wage laws.

14 Addressing the pending actions first, Movants argue
15 that they are "similarly situated" to other plaintiffs who have
16 prevailed on similar claims. However, the potential merit of
17 the claims in the underlying actions is irrelevant with respect
18 to the Motions before this Court today, because administrative
19 expense claimants have the burden of conclusively establishing
20 the liability of the debtor before seeking a ruling on
21 entitlement to priority treatment.

22 "The burden of proving entitlement to priority payment
23 as an administrative expense . . . rests with the party
24 requesting it[.]" That is a quote from In re Fin. Oversight &
25 Mgmt. Bd. for P.R., 621 B.R. 289, 296 (D.P.R. 2020), aff'd, 7

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1 F.4th 31 (1st Cir. 2021). It falls to the claimant to
2 establish the liability of the debtor under applicable law.
3 See, e.g., Gorgan v. Garner, 498 U.S. 279, 283 (1991).

4 With respect to the pending actions, Movants do not
5 appear to argue that they are entitled to immediate payment or
6 that they hold final judgments. Instead, in the Motion
7 pertaining to the Acevedo-Camacho action, they state that
8 "Movants are not the beneficiaries of a judgment from a
9 Commonwealth Court since their litigation claim[s] have not yet
10 been resolved on the merits, [they] request [for] this court[]
11 to take judicial notice that by filing the present Motion,
12 Movants are not requesting[] the immediate payment of the back
13 pay accrued pre-petition[.]" (Docket Entry No. 21194 paragraph
14 22(A).) Similarly, Movants cannot request immediate payment of
15 their back pay claims in any of the other pending actions.

16 Instead of immediate payment, Movants ask for a
17 comfort order that their postpetition wage claims will be
18 administrative expenses, as well as for the Court to order the
19 Commonwealth to set aside hundreds of millions of dollars into
20 a reserve to pay the judgments when the cases are won and
21 finalized, and Movants don't believe that that final result is
22 in any doubt.

23 However, Movants are not entitled to such a comfort
24 order or to any reserve. Their claims are contingent. Any
25 comfort orders with respect to the future treatment of Movants'

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1 potential post postpetition claims would be a premature and
2 improper advisory opinion, because the Commonwealth's liability
3 has not yet been established. Further, Movants' request that
4 the Court order the Commonwealth to set aside funds to satisfy
5 potential future rulings is unsupported by any basis in law or
6 in fact.

7 Accordingly, the Motions for allowance and payment of
8 any wage claims deriving from the pending actions are denied at
9 this juncture, along with any ancillary requested relief.

10 Movants have filed their Motions as administrative claims in
11 advance of the administrative claims bar date, and they will be
12 addressed by the Debtor in due course.

13 So the separate claims that have been filed will be
14 argued by the Debtor. Is that your intention, Mr. Rosen?

15 MR. ROSEN: Do you want me to --

16 THE COURT: Just speak into your microphone.

17 MR. ROSEN: Your Honor, I thought what you were going
18 to do was -- based upon your questioning, was address them as
19 admin expense claims now, but if we can reserve that and deal
20 with them subsequently -- what I was saying was we will deal
21 with the prepetition when we deal with the general unsecured
22 claims. We'll object to those proofs of claim as we would
23 normally do, your Honor.

24 To the extent that there is a postpetition piece, your
25 Honor, we will -- we will deal with that, as we said, in our

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1 papers, your Honor. The Commonwealth does not dispute that
2 there might be something on a postpetition basis. It just
3 wants to deal with the litigation that is out there with the
4 Puerto Rico Supreme Court, or CASP, as you referred to already,
5 so --

6 THE COURT: Alright. So I think now I'm getting a
7 little confused as to what I believe they filed --

8 MR. ROSEN: Yes.

9 THE COURT: -- and whether there are parallel claims
10 filed as well as these motions, but I am ruling today on -- as
11 to the postpetition claims -- the request that they be paid
12 immediately or be secured. That is being denied.

13 MR. ROSEN: Yes.

14 THE COURT: To the extent there remains an underlying
15 timely filed claim for treatment of finally determined
16 liability for postpetition wages, as an administrative expense,
17 I'm not ruling on that today, and I'm leaving it to the Debtor
18 to handle liquidation and any payment of that claim or
19 objection to that claim in the ordinary course of resolution of
20 claims.

21 MR. ROSEN: We are in complete agreement, your Honor.

22 THE COURT: Alright. Thank you. This is complicated.

23 So going on now, only one of the Motions pertains to
24 an action in which the respective Movants have obtained a final
25 judgment. This is Docket Entry No. 21195 relating to the case

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1 Carmen Socorro Cruz-Hernandez, et al., v. Family Department,
2 ARV, and AIJ, which is Case No. K AC 1991-0665, (which I'll
3 refer to that as the "Socorro Cruz Hernandez Action"). Movants'
4 request that the portion of the judgment pertaining solely to
5 prepetition wages be paid immediately in full as
6 "administrative back pay."

7 Movants contend their prepetition wage claims merit
8 administrative expense status under section 503(b)(1)(A)(ii) of
9 the Bankruptcy Code, as incorporated through Section 301(a) of
10 PROMESA, which provides for a category of administrative
11 expenses consisting of "wages and benefits awarded pursuant to
12 a judicial proceeding . . . as back pay attributable to any
13 period of time occurring after commencement of the case under
14 this title as a result of a violation of Federal or State law
15 by the debtor, without regard to the time of the occurrence of
16 unlawful conduct on which such award is based or as to whether
17 any services were rendered[.]" With respect to wages earned
18 prepetition, Movants argue that because this provision refers
19 to "back pay," it makes all prepetition wages an administrative
20 expense of the Debtor.

21 At a hearing held on August 4, 2021, the Court
22 rejected Movants' counsel's arguments regarding section
23 503(b)(1)(A)(ii) in connection with similar claims. In the
24 course of opposing the reclassification of several claims as
25 general unsecured claims, counsel had made this same argument

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1 that wage claims for back pay earned prepetition are
2 administrative expenses. At the August 2021 hearing, I
3 considered and rejected that argument, saying that "the
4 claimant's asserted basis for administrat[ive] expense priority
5 under section 503(b)(1)(A) of Title 11 only extends to claims
6 arising from events that occur after the commencement of a
7 bankruptcy case, and all of these claimants are asserting
8 claims that long predate the debtors' Title III petitions."

9 (Aug. 4, 2021, Hr'g Tr., Docket Entry No. 17705, at 113:19-24.)

10 I reaffirmed this ruling in the course of denying Movants'
11 counsel's motion for reconsideration of the reclassification
12 ruling. The ruling denying reconsideration cited the August 4,
13 2021, hearing transcript, and stated that the claimants "failed
14 to persuade the Court that 11 U.S.C. [section] 503(b)(1)(A)
15 applied to their claims." (Docket Entry No. 20569 at 4.)

16 The argument remains meritless. To the extent to
17 which res judicata does not render making the same ruling yet
18 again unnecessary, I am now reaffirming my prior interpretation
19 of the plain language of 11 U.S.C. section 503(b)(1)(A)(ii).
20 It applies only to "back pay attributable to any period of time
21 occurring after commencement of the case under this title[.]"
22 Accordingly, none of the claims asserted here for wages
23 attributable to the prepetition period qualify for
24 administrative expense priority and the Motion (Docket Entry
25 No. 21195) is denied. I am not likely to come to a different

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1 conclusion should this argument be presented to me again. The
2 Court will enter an order denying each of the administrative
3 expense motions. And, again, that is denying these motions
4 which are seeking immediate payment, the provision of a comfort
5 order, or the putting aside of security for these putative
6 administrative expense claims.

7 The Court will enter an order denying the motions
8 consistent with these oral remarks, and the movants' underlying
9 administrative claims and their filed prepetition proofs of
10 claim that are not yet the subject of disallowance by a final
11 order of the Court have not been resolved and will be addressed
12 in due course before the Oversight Board's time to object to
13 proofs of claim elapses.

14 I thank both counsel for their help and guidance to me
15 and for their arguments.

16 MR. ROSEN: Thank you, your Honor.

17 THE COURT: So now the next contested matter is Agenda
18 Item II.2, which is Molina-Ruiz stay relief motion.

19 Mr. Rosen.

20 MR. ROSEN: Your Honor, the screens are black here. I
21 don't know if they'll go back on.

22 THE COURT: Okay. Let's see if we can get those to
23 work.

24 MR. ROSEN: Oh, they're on now. Thank you.

25 THE COURT: Alright. So counsel Jose Luis

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1 Novas-Debien is speaking on behalf of the movants, and I have
2 him down for five minutes for his opening remarks.

3 Good morning, Mr. Novas-Debien.

4 MR. NOVAS-DEBIEN: Good morning, Your Honor. It's a
5 pleasure to be here this morning.

6 We will be brief, your Honor, as all matters have been
7 briefed already in the various pleadings before the Court. I'm
8 just going to focus, your Honor, on the matters that remain
9 contested per the joint report that the parties filed on the
10 31st, and it boils down to three items where we are in
11 disagreement, upon which or related to the Court had already
12 directed us to confer and had posed some relevant questions.

13 So those three matters that remain contested or that
14 merit some further clarification for your Honor are, number
15 one, the status of the litigation over at the Puerto Rico State
16 Court in Bayamon Park; a second matter that remains contested
17 is whether movants' claim is actually a claim within the
18 purview of the Bankruptcy Code, and, thus, subject to the
19 automatic stay; and lastly, your Honor had directed the parties
20 to expound upon the impact of the *Gracia-Gracia* case upon the
21 case at bar. And so those are the three items that I'm just
22 going to touch upon as quickly as I can.

23 The most important, your Honor, that's where we will
24 start, the status of the litigation. Your Honor, before us we
25 have a judgment that is long, final, firm, and unappealable.

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1 It's a non-monetary judgment ordering the return of certain
2 animals to Ms. Lilia Molina. It's final, firm, an
3 unappealable, because as of November 17, 2017, all motions to
4 reconsider that had been filed by the Commonwealth had been
5 denied.

6 In fact, when the Court actually moved later on to
7 stay the proceedings based on Title III, PROMESA, that was on
8 an order dated August 28, 2018, the Bayamon Court itself
9 recognized that it was a final and firm judgment, executable.
10 It recognized that the case was at the post judgment execution
11 of judgment stage, where Ms. Molina had been seeking a return
12 of the animals for a while. And not only that, your Honor, and
13 what makes it final and firm, also, is that -- and contrary to
14 what the Commonwealth states or posits, the automatic stay
15 under Title III, PROMESA, perhaps dating back all the way to
16 May 3rd, 2017, is really not self-executing, your Honor.

17 There's a number of federal courts that have
18 recognized a state court's ability or authority to decide
19 whether automatic stays apply to the proceedings -- to
20 proceedings before them or not, most specially when the
21 proceedings are proceedings that relate -- that don't relate to
22 monetary judgments, that really have no impact on a debtor's
23 estate in a bankruptcy case. So the state court, just to wrap
24 up this point, issued a judgment back on August 18, 2016, that
25 became final and firm December 30th -- or 31st, actually, 2017,

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1 when the final motion to reconsider -- the Commonwealth's
2 motion to reconsider was denied.

3 So that brings us to the second point, and that's the
4 nature of, you know, whether movants' claim, which -- in the
5 meaning of the Bankruptcy Code is a claim under section 101(5).
6 It really is not, your Honor, because it's a claim per the
7 state court judgment. It provides for return of certain
8 animals. There are no money damages to speak of or any right
9 to payment at this stage.

10 There's also no issue of the Commonwealth's ability to
11 perform and comply with the judgment at this stage. We're
12 going to get into that in a moment. It is a judgment that is
13 perfectly executable regarding the delivery of those animals.

14 We do know that the Commonwealth attempts to create a
15 factual issue regarding its ability to deliver the animals at
16 this stage, and upon that would hinge what the Commonwealth
17 advances as possible monetary claims, but that's -- it's really
18 a non-issue, because the horses, your Honor, the animals --

19 (Sound played)

20 MR. NOVAS-DEBIEN: -- were received by a third-party
21 receiver, which is the Bayamon Municipality. In Puerto Rico, a
22 receivership is a contract like any other, and it provides for
23 very simple obligations. And it's basically when the
24 depositor, which is the Commonwealth, turns over the property
25 to the receiver, the receiver is simply bound to keep the

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1 property safe, save normal wear and tear, that kind of thing,
2 keep it, safe keep it, and return it back to the depositor,
3 which is the Commonwealth, upon the depositor's request. Those
4 are the basic elements of the receivership under the Puerto
5 Rico Civil Code. In Spanish it's titled (Remarks in Spanish.)

6 So the Commonwealth cannot now claim that these
7 animals are not in its possession, that they are -- they would
8 be in a tenuous situation now before claimant, who could sue
9 them for damages. That's not the case. The Commonwealth is
10 perfectly able to now, within the Bayamon case, to produce
11 those animals simply by claiming that the Municipality, which
12 is a receiver, turn them over, because that's the
13 Municipality's legal duty and that's -- and that's the matter
14 with that.

15 To conclude, Your Honor --

16 THE COURT: Yes. I was going to ask you --

17 MR. NOVAS-DEBIEN: Yes.

18 THE COURT: -- to conclude the remarks, because you
19 did run over your time about a minute and a half ago.

20 MR. NOVAS-DEBIEN: Yes. And so we leave it submitted
21 as it is, your Honor. Under *Gracia-Gracia*, your Honor, of
22 course the Court needs to, at a threshold level, make a
23 determination, number one, whether there's any equity that the
24 Commonwealth has on these animals, which it does not; and the
25 second, that a threshold issue is whether the animals are in

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any way important or necessary for the structuring of the Commonwealth's finances, which obviously they are not.

So that's what we have for the Court, your Honor, in terms of argument.

THE COURT: Thank you very much.

I'll now call Mr. Rosen to the podium here in New York.

MR. ROSEN: Thank you very much, your Honor. Brian Rosen of Proskauer Rose on behalf of the Oversight Board.

Your Honor, this really comes down to what I perceive it to be, which is a simple argument, is there a claim or is there not a claim against the Commonwealth. And counsel, he hedges all the time, and he carefully used the words "at this stage" in his remarks today.

We have been trying to understand what the magnitude, if any, of the issue might be back against the Commonwealth. There is no dispute. The Commonwealth does not have these animals. Several of the animals were donated. The balance of those are with the Municipality of Bayamon. But the Commonwealth --

THE COURT: Donated by whom to what?

MR. ROSEN: Your Honor, I don't know if they were actually donated by the Commonwealth directly or by Bayamon directly to this third party, to a parks organization I believe it was, your Honor. I'm not exactly sure who made the

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1 donation.

2 These animals were taken away, your Honor. They were
3 in a horrible state. Animals had to have -- actually,
4 corrective vision surgery. I understand one of them had
5 cataracts. Your Honor, the Municipality of Bayamon has
6 invested over \$60,000 to maintain the upkeep of these animals
7 and bring them back to health, but, your Honor, that's not the
8 issue I think here. The issue is the judgment seeks for the
9 Commonwealth, and it's solely against the Commonwealth, to have
10 the Commonwealth turn over these animals.

11 THE COURT: Yes.

12 MR. ROSEN: The Commonwealth does not have them. I do
13 not understand the Puerto Rico law reference that counsel made
14 for the first time today that it is a receivership and they
15 could, merely by asking, have them turned over. That is not my
16 understanding as to what the status is.

17 But, your Honor, what we have tried to lay out in the
18 joint status report, as well as in our other pleadings, is that
19 in the event that the Commonwealth is unable to return the
20 animals, under Puerto Rico law, there is a right, nunc pro
21 tunc, to request a claim back against the Commonwealth.
22 Counsel, on the one hand, says we're not seeking any monetary
23 relief. On the other hand, he says, as he did today, "at this
24 stage." We would like to know if, in fact, there is a waiver
25 of the monetary claim, if any, back against the Commonwealth.

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1 That might change the result of what we're trying to do here.

2 But the fact is they are still reserving their rights to assert
3 a monetary claim back against the Commonwealth.

4 THE COURT: Well, whether you give them any surviving
5 animals back today or not, there's still that looming potential
6 for a monetary claim against the Commonwealth, correct? If, in
7 fact, these animals have been, you know, lost, donated, stolen,
8 or whatever. And maybe Bayamon has a claim back against the
9 Commonwealth. Who knows.

10 But I think what I'm hearing today, and we'll ask
11 Mr. Novas-Debien to correct me if I'm wrong, is that they are
12 looking for an order that allows them to go to the Commonwealth
13 and say, give me my dogs and ponies. And the Commonwealth
14 might say, I don't have them, I cannot give them to you, so the
15 answer is no; and since all I've asked them to do -- all I've
16 authorized them to do is go and ask for them and get them, if
17 the Commonwealth has them and will give them back, then
18 everybody will have to figure out what the next stage is.
19 Perhaps I would be asked for further relief from the automatic
20 stay, or maybe they will simply have this claim against the
21 Commonwealth, which would be for noncompliance with the
22 judgment, breach of a bailment, something like that.

23 So, Mr. Novas-Debien, are you asking me today for
24 permission to do anything other than go and physically get the
25 animals?

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1 MR. ROSEN: Your Honor, before he makes that answer,
2 if I could just interject.

3 THE COURT: Yes.

4 MR. ROSEN: It was included in the joint status
5 report, and counsel started off with this with regard to the
6 status of the litigation itself. There's still a dispute as to
7 whether or not the judgment is final.

8 The Commonwealth disagrees with counsel's recitation
9 of the facts. It still believes that this is not final and it
10 can appeal the issue. So I don't think it's as simple as
11 saying, I want to go back and enforce a judgment in another
12 court and ask the Commonwealth to turn over animals which it
13 does not have. If anything, your Honor, it would be that the
14 party should go back and continue the litigation until they get
15 to a judgment that might be final and firm under Puerto Rico
16 law.

17 MR. NOVAS-DEBIEN: Your Honor, I'm sorry.

18 THE COURT: Just before you speak, Mr. Novas Debien,
19 how about I lift the stay to permit the movant to enforce the
20 existing judgment in so far as the movant seeks to obtain
21 possession of the animals?

22 MR. ROSEN: And to the extent that the judgment is not
23 firm and final, your Honor --

24 MR. NOVAS-DEBIEN: May I speak? May I answer the
25 question, your Honor, or will Mr. Rosen continue answering my

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1 questions?

2 THE COURT: Okay. I'm going to let Mr. Rosen continue
3 making this one statement, and then you have the podium after
4 that.

5 Mr. Rosen.

6 MR. ROSEN: Your Honor, I would suggest that if your
7 Honor were prepared to lift the stay in any regard, it would be
8 to allow the litigation to continue and to allow the
9 Commonwealth to assert its rights. And if, in the event that
10 there is no appellate action or further appellate action taken
11 by the Commonwealth and the judgment would be firm and final,
12 then -- then Ms. Molina-Ruiz could assert whatever rights that
13 she might have with respect to that firm and final judgment.

14 THE COURT: Thank you.

15 Now, thank you for your patience, Mr. Novas-Debien.
16 Please speak.

17 MR. NOVAS-DEBIEN: Thank you, ma'am. Thank you, your
18 Honor.

19 To answer your question, your Honor, that's all the
20 claimant or movant seeks is to lift the stay so she can go back
21 to the Bayamon Court and request return of animals that the
22 Commonwealth has conceded are available, including their
23 offspring.

24 That's another civil code obligation of the receiver.
25 If he has animals, the receiver has animals that have two

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1 turned into four, he has to return all four. That's all,
2 nothing more.

3 At this stage, it is impossible under the Puerto Rico
4 Rules of Civil Procedure and the status of litigation for Ms.
5 Molina to seek anything else. She never intended to seek
6 anything else but her animals, and that's all she's asking, to
7 -- right now, to be allowed to go back to Bayamon and ask for
8 her animals to be given back, as the Court had ordered back in
9 August, 2016.

10 This cannot become perpetual and now be continued
11 under the PROMESA Act, because, in Puerto Rico, judgments
12 become final and firm, your Honor. And that's what we're
13 trying to establish here. We have a final, firm, and
14 unappealable judgment that now must be complied with. That's
15 it. And it involves no money and no issue for the Commonwealth
16 money wise within the purview of Title III, PROMESA. It just
17 doesn't belong here is our view, your Honor. Never belonged
18 here.

19 MR. ROSEN: Your Honor, counsel I don't think answered
20 the question. He said that he wants to go back and go get the
21 animals. My point is, to the extent that there are still
22 appellate rights, those rights should be allowed to be asserted
23 by the Commonwealth in that proceeding. That's all I'm
24 suggesting, your Honor. And if they're not, and counsel is
25 correct that it is firm and final, then it is firm and final,

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1 but the Commonwealth feels differently.

2 THE COURT: So I would think some language that says,
3 permitting them to enforce and/or litigate to the extent
4 necessary the judgment for possession of the animals.

5 MR. ROSEN: The parties' rights are reserved and can
6 be reserved --

7 MR. NOVAS-DEBIEN: The state court --

8 THE COURT: One at a time, Mr. Debien.

9 MR. NOVAS-DEBIEN: Yes.

10 THE COURT: So I'm going to let Mr. Rosen finish his
11 sentence.

12 MR. NOVAS-DEBIEN: Yes.

13 MR. ROSEN: Your Honor, I think words to the effect,
14 that all parties reserve their rights in connection with the
15 judgment, including, without limitation, any appellate rights.
16 That would be fine with us.

17 THE COURT: Mr. Novas-Debien?

18 MR. NOVAS-DEBIEN: Yes, your Honor. We don't -- we're
19 not asking the Court to curtail or to shut down any appellate
20 rights that the Commonwealth may have. The state court judge
21 in Bayamon knows exactly what those rights are and ELA sure
22 knows what they are, and they can assert them there.

23 So it's really besides the point what they can do.
24 The Bayamon Court is -- it's grist of the mill of the Bayamon
25 Court, not your Honor's -- it should not -- I mean, if the

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1 Commonwealth feels more comfortable with an order that
2 indicates that they are not waiving any rights to continue the
3 litigation on appeal, that's fine by us. It's their right. We
4 don't want to infringe their rights.

5 THE COURT: Thank you.

6 So, Mr. Rosen, anything further?

7 MR. ROSEN: No. I guess I wish counsel would go as
8 far as to represent to the Court that they will not seek any
9 monetary recovery, although he said it several times, but he
10 doesn't want to go hard and fast on it, but I have nothing
11 further, your Honor.

12 THE COURT: Yes. Well, why should he have to now if
13 all he's going to do is try to get the horses --

14 MR. ROSEN: I know. It's the second half of the
15 problem we've always focused on.

16 THE COURT: Mr. Novas-Debien, Mr. Rosen says the
17 Commonwealth, when you come for the horses, is going to say
18 they don't have the horses. And so are you asking me for any
19 relief in that regard right now?

20 MR. NOVAS-DEBIEN: I'm sorry, your Honor. I missed
21 with regard to what exactly.

22 THE COURT: Mr. Rosen is saying that the Commonwealth
23 is going to say they don't have the horses, they can't give you
24 the horses whenever it is that the judgment is determined to be
25 final, because he doesn't agree with you that Bayamon is

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1 obliged to give you the horses if the Commonwealth tells them
2 to. So he's concerned that then your client will say, give me
3 the value of the horses in money.

4 So I'll put it this way. Are you asking me for
5 permission to pursue that sort of claim right now, or do you
6 accept that you would have to come back to this Court to seek
7 to pursue that kind of claim?

8 MR. NOVAS-DEBIEN: Yes, absolutely not. It's not the
9 intent to seek monetary damages within that case, because that
10 is -- it's a judgment precluded by the stage of where
11 proceedings are. There's never been a recommend -- at this
12 stage, your Honor, it's not claimant's -- it's not claimant's
13 intent to go to the Bayamon Court and seek money, a money award
14 of any kind. She's just going to move for the return of the
15 animals. That is what we have been stating all along.

16 MR. ROSEN: I don't think we can get anything further
17 out of counsel at this point, your Honor. I don't know what
18 else to do. But you understand my concerns.

19 THE COURT: I understand the concern. I think that
20 that concern may well ripen into something real if you don't
21 come up with some animals, but counsel is not asking me to make
22 any sort of -- make or authorize any sort of damages
23 determination right now.

24 MR. ROSEN: Thank you, your Honor.

25 MR. NOVAS-DEBIEN: That's correct, your Honor.

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1 THE COURT: Okay. Thank you.

2 So give me just a moment. Actually, Mr. Rosen, why
3 don't you go back there for a moment.

4 MR. ROSEN: Yes, your Honor.

5 THE COURT: Okay. So are you claiming in any way that
6 the animals are property of the Commonwealth or are necessary
7 to an effective reorganization of the Commonwealth?

8 MR. ROSEN: No, your Honor. We do not maintain that
9 the Commonwealth has any equity in these animals, nor is the
10 property necessary for an effective reorganization.

11 THE COURT: Thank you.

12 MR. ROSEN: Our only point, your Honor, is that the
13 parties to whom he needs to get appropriate relief are not
14 parties to the judgment. We've tried to maintain that all
15 along. We don't have the animals. That's all we say, Your
16 Honor.

17 THE COURT: Okay. So --

18 MR. ROSEN: There's no effective relief in other
19 words.

20 THE COURT: Alright. Having listened carefully to the
21 statements in court here today, and having read the
22 submissions, and in light of the limited relief that is sought
23 by the movant, and the Commonwealth's acknowledgement that it
24 does not claim any right of ownership in the animals in
25 question, and that they are not necessary for its

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1 reorganization, the Court grants the motion from relief from
2 the stay to the extent that it is necessary to permit the
3 movant to seek to enforce the judgment ordering return of the
4 animals to the movant. This relief is without prejudice to the
5 parties' positions and any rights that they may have with
6 respect to further appellate litigation of the judgment.

7 Is that language acceptable to the Commonwealth?

8 MR. ROSEN: It is, Your Honor.

9 THE COURT: Is that language acceptable to you,
10 Mr. Novas-Debien?

11 MR. NOVAS-DEBIEN: Absolutely.

12 THE COURT: Thank you. The Court will enter an order
13 accordingly. Thank you both very much.

14 MR. NOVAS-DEBIEN: Thank you, your Honor. Permission
15 to withdraw.

16 THE COURT: Yes. Thank you. You may.

17 So the next and final set of contested matters are
18 Omnibus Objections to claims, beginning with the 453rd Omnibus
19 Objection to claim.

20 I understand that Mr. -- is it Mr. Esses?

21 MR. ESSES: Esses.

22 THE COURT: Mr. Esses will be speaking on behalf of
23 the Commonwealth.

24 Is the counsel for the objecting parties,
25 Ms. Hernandez-Rodriguez, here or in the San Juan courtroom?

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1 Ms. Hernandez-Rodriguez, are you on the Court
2 Solutions line? If you are, I'd like you to acknowledge that
3 and unmute and speak.

4 I will also note for the record that I do not see her
5 registered on the Court Solutions line. So is there anyone in
6 either courtroom or on the Court Solutions line intending to
7 speak in opposition to the 453rd Omnibus Objection to claim?

8 Alright. I hear no one.

9 Please go ahead, Mr. Esses.

10 MR. ESSES: Thank you, your Honor. For the record,
11 Joshua Esses of Proskauer Rose for the Oversight Board.

12 On the 453rd objection, I'll just explain what
13 happened, what's going on here, and the limited relief that
14 we're seeking. The claimant Ms. Maria Figueroa-Torres filed
15 Proof of Claim No. 179281 asserting unpaid wages of
16 approximately \$63,000 owed by the Department of Health, which
17 is an agency of the Commonwealth, and also against the Ponce
18 District Hospital, which is not a part of the Commonwealth for
19 these Title III cases.

20 The Oversight Board transferred that claim to ACR, and
21 after further review, bifurcated the claim into a claim against
22 the Department of Health and a claim against the Ponce District
23 Hospital, which we denoted as 179281-1.

24 The Board withdrew that claim, the new bifurcated
25 claim against the Ponce District Hospital from ACR, and the

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1 453rd Omnibus Objection objected to it on the grounds it
2 doesn't assert liability against the Commonwealth. The
3 claimant filed a response in essence saying it does assert a
4 liability against the Commonwealth, because the Ponce District
5 Hospital was, at the time of the contract and at the time of
6 the claimant's employment, a part of the Department of Health.

7 And what the other Oversight -- what the Oversight
8 Board intended to do is to allow that claim to proceed and fall
9 against the Commonwealth in the ACR process. So, you know, I
10 want to emphasize to both your Honor and to the claimant that
11 every dollar the Commonwealth owes the claimant under
12 Commonwealth law in connection with her wage claim will be paid
13 as determined through the ACR process and this Court's ACR
14 order, but the proof of claim which we are asking you to
15 disallow in connection with this Omnibus Objection is simply
16 with respect to the claim asserted against the Ponce District
17 Hospital, which is not a part of these Title III cases.

18 So that's the relief that we're looking for today.

19 THE COURT: So have you offered any proof -- I haven't
20 seen anything in the record that indicates that the Ponce
21 District Hospital at some point separated from the
22 Commonwealth. My understanding of the objection was that you
23 were saying that, at some point, working for the Ponce District
24 Hospital was not the same as working for the Commonwealth. I
25 didn't see anything in the record that explained when that

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1 happened, what happened to the liabilities of the Ponce
2 District Hospital, and so I was not prepared to sustain this
3 objection.

4 It sounds today as though you may be saying something
5 different, which would be that the -- if you're working for the
6 Ponce District Hospital, you're working for the Commonwealth,
7 and so the claim should be against the Commonwealth and not the
8 Ponce District Hospital; and any compensation for that work
9 that is found to be owing would be a liability of the
10 Commonwealth.

11 MR. ESSES: Yes, your Honor, to the extent that at the
12 time the claimant was working for the Ponce District Hospital,
13 the hospital was a part of the Department of Health and the
14 Commonwealth.

15 THE COURT: So do you have anything that would
16 establish that at some point, some relevant point in time, the
17 Ponce District Hospital was not part of the Department of
18 Health of the Commonwealth?

19 MR. ESSES: There's nothing that I could point to,
20 your Honor. I would think that the burden would be on the
21 claimant to establish that the Ponce District Hospital was a
22 part of the Commonwealth at the relevant time. But in either
23 case, we are prepared to allow every cent that the claimant is
24 owed under Puerto Rico law to -- by the Commonwealth for work
25 performed for the Ponce District Hospital in full through the

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1 ACR process.

2 THE COURT: Give me just one moment.

3 MR. ESSES: Alternatively, your Honor, we're happy to
4 adjourn this to hopefully be resolved just through the
5 submission of papers that we can provide, the documentary
6 evidence with respect to whether or not the Ponce District
7 Hospital was a part of the Commonwealth at the relevant times.

8 THE COURT: That would be a clearer and better way to
9 resolve this, and so this is adjourned pending supplementation
10 of the objection.

11 MR. ESSES: Thank you, your Honor.

12 THE COURT: If I establish a deadline of November 30th
13 for filing and service of the supplement, is that sufficient
14 time?

15 MR. ESSES: Certainly.

16 THE COURT: That is what we will do. Supplemental
17 papers to be filed by November 30th.

18 So the next objection is the 492nd Omnibus Objection.

19 MR. ESSES: Thank you, Your Honor.

20 I can report that the claimant -- claimant's counsel
21 confirmed to me via email this morning that they'll no longer
22 be pursuing that objection, so unless you have any questions
23 with respect to that, I have nothing further to add.

24 THE COURT: So they're no longer opposing the
25 objection.

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1 MR. ESSES: Yes, your Honor.

2 THE COURT: Alright. So you're content to have me
3 rule on the papers on that?

4 MR. ESSES: Yes, your Honor.

5 THE COURT: Alright. Before the Court is the 492nd
6 Omnibus Objection (Substantive) of the Commonwealth of Puerto
7 Rico, the Employees Retirement System of the Government of the
8 Commonwealth of Puerto Rico, and the Puerto Rico Highways and
9 Transportation Authority to Claims for which the Debtors are
10 Not Liable (Docket Entry No. 21741 in case 17-3283. I'll call
11 it the "Omnibus Objection"), which is filed by the Oversight
12 Board. This objection seeks disallowance of several proofs of
13 claim, including Proof of Claim No. 27270 filed by Downtown
14 Development Corporation, which I will sometimes refer to as
15 "DDC".

16 In opposition to the Omnibus Objection, DDC argues
17 that its claim is a valid obligation incurred by the
18 Commonwealth in connection with a lease dated September 5,
19 2014, which was referred to in a letter attached to DDC's proof
20 of claim, and which DDC filed with an amended proof of claim
21 and with its opposition to the Omnibus Objection.

22 The Court has carefully considered the pleadings
23 submitted by the Oversight Board and the DDC concerning the
24 Omnibus Objection, and, for the reasons that follow, the
25 Omnibus Objection is sustained and the proof of claim is

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1 disallowed in its entirety.

2 Before I finish with this oral ruling, Mr. Esses, are
3 you saying that the response to the objection is being
4 withdrawn or that -- is there something in the record
5 withdrawing it, or they're just not showing up today and
6 they're resting on their papers?

7 MR. ESSES: I think the latter is a fair description.

8 THE COURT: Then I'll finish my ruling.

9 To begin with, the Court will not reject out of hand
10 all consideration of the September 5, 2014, lease agreement
11 submitted by DDC in response to the Omnibus Objection. Case
12 law in this Circuit instructs courts to provide leave to amend
13 proofs of claim "freely . . . when justice so requires," taking
14 into consideration whether the amendment (i) is "a veiled
15 attempt to assert a distinctly new right to payment as to which
16 the debtor estate was not fairly alerted by the original proof
17 of claim," (ii) would result in unfair prejudice to other
18 holders of unsecured claims, and (iii) is "the product of bad
19 faith or dilatory tactics on the part of the claimant." Gens
20 v. Resolution Trust Corporation, 112 F.3d 569, 575 (1st Cir.
21 1997). Here, DDC does not seem to be asserting a new claim,
22 but rather further supporting and clarifying the basis of its
23 timely proof of claim. The supplementation does not appear to
24 be the result of bad faith or dilatory tactics, and no creditor
25 would be unfairly prejudiced by the supplementation. As such,

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1 the Court will next consider the Omnibus Objection and the
2 validity of the Proof of Claim as supplemented by DDC.

3 "A proof of claim which comports with the requirements
4 of Bankruptcy Rule 3001(f) constitutes prima facie evidence of
5 the validity and amount of the claim." In re Hemingway
6 Transport, Inc., 993 F.2d 915, 925 (1st Cir. 1993). However,
7 if a debtor interposes an objection supported by "substantial
8 evidence," the burden of demonstrating the validity of the
9 claim shifts to the claimant. Id. And the Court stated "once
10 the trustee manages the initial burden of producing substantial
11 evidence, the ultimate risks of nonpersuasion as to the
12 allowability of the claim rests with the party asserting the
13 claim."

14 DDC's Proof of Claim asserts a claim for \$38,385.19
15 against the Commonwealth. According to DDC's response to the
16 Omnibus Objection, that amount allegedly represents the balance
17 of rent outstanding under the lease agreement between DDC and
18 the government dated September 5, 2014. As evidence of the
19 amount of debt owed by the government, a "Tenant Ledger" is
20 annexed to the Proof of Claim.

21 Through the Omnibus Objection and the annexed
22 declaration of Jay Herriman, the Oversight Board has rebutted
23 the initial prima facie validity of the Proof of Claim, thereby
24 causing the burdens of proving the validity of the claim to
25 revert to DDC. Specifically, the Oversight Board has

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1 convincingly demonstrated that the Tenant Ledger does not
2 accurately represent the government's outstanding rent
3 obligations to DDC.

4 Apparently our AT&T line has gotten disconnected, so
5 we'll pause for a minute. So they're going to try to reconnect
6 it, and I'll finish the ruling after that.

7 Mr. Esses, if you want to have a seat or continue to
8 stand, it's up to you.

9 (Pause taken)

10 THE COURT: Okay. I understand it is back up, so I
11 will finish making my ruling.

12 Commonwealth law is clear that no valid claim may be
13 asserted against the government for the use of leased premises
14 during a period when a written lease is not in effect. See
15 Vicar Buildings v. Commonwealth of Puerto Rico, 192 D.P.R. 256
16 (P.R. 2015.)

17 A review of the Tenant Ledger shows that as of the end
18 of the 2009 lease between DDC and the government in June of
19 2014, the balance of rent owed by the government was zero.
20 (See page 15 of 26 of the Proof of Claim.) Then, on each of
21 July 1, 2014, August 1, 2014, and September 1, 2014, the Tenant
22 Ledger added \$17,993.33 to the balance allegedly owed by the
23 government. Notwithstanding that, DDC has not alleged, much
24 less demonstrated that a lease agreement was in place at any of
25 those points. Rather, it appears that a lease was executed on

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1 September 5, 2014. Thus, the Tenant Ledger appears to
2 incorrectly add approximately \$38,385 to the balance of rent
3 owed by the government. That amount represents \$17,993.33 for
4 each of July and August of 2014, plus a prorated amount for
5 four days of September 2014. Moreover, the Tenant Ledger
6 appears to demonstrate that the government paid rent in a
7 manner consistent with that state of affairs. Page 5 of 26 of
8 the Proof of Claim, which is another page of the Tenant Ledger,
9 shows that check number 3253866 was in the amount of
10 \$15,594.80, an amount that almost exactly corresponds to the
11 prorated amount that would have been due for the month of
12 September 2014, excluding the first four days of that month
13 when no lease was in effect.

14 DDC has submitted no evidence tying the outstanding
15 balance of rent allegedly owed to any period of time in which a
16 lease was in effect between DDC and the government. Rather, it
17 appears that the most logical interpretation of the document
18 submitted by DDC is that the asserted debt corresponds to the
19 period when no lease was in effect, and DDC's Proof of Claim
20 attempts to carry forward that invalid debt.

21 Accordingly, DDC has not met its burden of
22 establishing the validity of its claim, and the Oversight
23 Board's objection is sustained in its entirety. DDC's Proof of
24 Claim is therefore disallowed in its entirety.

25 Now, Mr. Esses, does this resolve the only pending

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1 response to the Omnibus Objection?

2 MR. ESSES: I believe that's right, and so we'll file
3 a notice of presentment with the Court -- or I should say we'll
4 submit a notice of presentment to your chambers.

5 THE COURT: Yes. So what I'll need is -- to the
6 extent that there's nothing else outstanding in the Omnibus
7 Objection, it's sustained in its entirety, and I ask that you
8 submit a Word version of the proposed order resolving the
9 Omnibus Objection to chambers.

10 MR. ESSES: Certainly. Thank you, your Honor.

11 THE COURT: Thank you.

12 So that takes us to the 526th Omnibus Objection, which
13 is number 22259 in case 17-3283.

14 I am informed that Ms. Gonzalez-Morales left the
15 courtroom in San Juan.

16 MR. SKRZYNISKI: Good afternoon, Your Honor.

17 THE COURT: Good afternoon.

18 MR. SKRZYNISKI: Matthew Skrzynski on behalf of
19 Proskauer Rose for the Oversight Board.

20 The 526th objection at ECF No. 22259 objected to
21 claims that assert liability in connection with the prepetition
22 case captioned Nilda Agosto-Maldonado, et al., v. The Puerto
23 Rico Family Department, et al., Case No. KPE 2005-0608. I'll
24 refer to this as the Augusto-Maldonado litigation.

25 Plaintiffs' counsel has failed a master proof of claim

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1 on behalf of all plaintiffs in the litigation, and other
2 documents that identify the names of those plaintiffs. This
3 objection identified claimants whose names did not appear on
4 the plaintiffs' list.

5 We did receive one response filed at ECF No. 22624
6 filed by two claimants, claimant Rivera-Garcia and claimant
7 Valle-Valdivieso. As to claimant Rivera, which corresponds to
8 Proof of Claim No. 32127, we saw that counsel filed a request
9 to amend that proof of claim to change the name of the
10 claimant. As noted in our reply, we did not object to that
11 name change and the Court has approved the claimant's request
12 for leave to amend at ECF 22771. With that change to the proof
13 of claim, our objection is resolved as to Claim No. 32127.

14 As to claimant Valle, the corresponding Proof of Claim
15 No. 113154, counsel in their reply stated that the name Luz
16 Valle Valdivieso appears in the plaintiff list, but such name
17 still does not appear to be included. For this reason, we ask
18 that the objection be sustained as to Proof of Claim No.
19 113154.

20 THE COURT: Thank you.

21 Just to be clear, is there anyone appearing in San
22 Juan or on Court Solutions to speak in opposition to this
23 objection to claim? If you're in San Juan, come to the podium.
24 If you are on Court Solutions, please unmute on your phone and
25 the Court Solutions dashboard and state your name.

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1 I see no one at the podium or approaching the podium
2 in San Juan, and I hear no one speaking on Court Solutions, so
3 I will rule.

4 Before the Court is the 526th Omnibus Objection
5 (Substantive) of the Commonwealth of Puerto Rico and the
6 Employees Retirement System of the Government of the
7 Commonwealth of Puerto Rico to Claims for which the Debtors are
8 Not Liable (Docket Entry No. 22259 in Case No. 17-3283) filed
9 by the Oversight Board. The Omnibus Objection seeks
10 disallowance of several proofs of claim, including the Proof of
11 Claim No. 113154 (the "Valle-Valdivieso Claim"). It had also
12 objected to the "Rivera-Garcia Claim," but with the amendment
13 of that claim, am I to understand correctly that the Oversight
14 Board withdraws that aspect of the 526th objection?

15 MR. SKRZYNISKI: That's right.

16 THE COURT: Thank you.

17 The Court has carefully considered the pleading
18 submitted by the Oversight Board and the claimant concerning
19 the Omnibus Objection and the arguments today. And the Court
20 does expect that the order ultimately submitted concerning the
21 objection will reflect the withdrawal of the objection to the
22 Rivera-Garcia Claim.

23 So as to the Valle-Valdivieso Claim, the proof of
24 claim which comports with the requirements of 3001(f) of the
25 Bankruptcy Rules constitutes prima facie evidence of the

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1 validity and amount of the claim, but if the Debtor proffers an
2 objection supported by substantial evidence, the burden of
3 demonstrating the validity of the claim shifts to the claimant.

4 In re Hemingway Transport, Inc., 993 F.2d 915, 925 (1st Cir.
5 1993).

6 The Valle-Valdivieso claim appears to be based upon
7 Ms. Valle-Valdivieso's status as a plaintiff who has obtained a
8 judgment against the government in the lawsuit captioned Nilda
9 Agosto-Maldonado, et al., v. Commonwealth of Puerto Rico Family
10 Department, et al. or the Agosto-Maldonado litigation. But as
11 set forth in the Omnibus Objection and the Reply, and as
12 confirmed by the Court's own review of the exhibit to the
13 judgment submitted by Ms. Valle-Valdivieso in support of the
14 claim, her name does not appear among those of the plaintiffs
15 in the Agosto-Maldonado litigation.

16 The Oversight Board has, therefore, rebutted the
17 Valle-Valdivieso Claim's validity, and the claimant has not
18 proffered evidence that she has a valid claim against the Title
19 III debtors arising out of the Agosto-Maldonado litigation.
20 Accordingly, the Oversight Board's Omnibus Objection is
21 sustained as to the Valle-Valdivieso Claim, and that Claim,
22 which is number 113154, is disallowed in its entirety.

23 Does this resolve all of the outstanding matters with
24 respect to the 526th Omnibus Objection?

25 MR. SKRZYNSKI: Yes, your Honor. We are not aware of

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any other responses.

THE COURT: Very well then. With the exception of the withdrawn objection to the Rivera-Garcia claim, the Omnibus Objection is sustained in its entirety and the Oversight Board is directed to submit a Word version of a revised proposed order resolving the Omnibus Objection to chambers.

MR. SKRZYNNSKI: We will.

THE COURT: Thank you.

Now we have the 527th Omnibus Objection.

MR. SKRZYNNSKI: Your Honor, Matthew Skrzynski again for the Oversight Board.

The last item on the agenda is the 527th objection to claims at ECF No. 22261. This objection partially objects to claims to the extent that they assert liability in connection with the Agosto-Maldonado litigation. As with the prior objection, the claimant's name does not appear on the plaintiffs' list associated with such litigation that has been filed by counsel.

THE COURT: I need you to speak a little louder.

MR. SKRZYNNSKI: I will.

We received one response from claimant Sara Cruz-Lorenzana, Proof of Claim No. 83256, filed at ECF No. 222429. The claimant states that the proof of claim does not state that the claimant is a plaintiff but rather the plaintiff in another case. As we pointed out in the reply however, the

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1 debtors did have a concern that the proof of claim attaches a
2 debt certificate, and in the certificate of debt the claimant
3 lists two case numbers, one of those being KPE 20050008, which
4 has been identified by the debtors' advisors as being used in
5 other proofs of claim to reference the *Agosto Maldonado*
6 litigation.

7 So, in sum, the debtors do believe that the proof of
8 claim purports to assert some liability in connection with the
9 *Agosto Maldonado* litigation, and for this reason, we ask the
10 objection be sustained as to Proof of Claim No. 83256.

11 THE COURT: So am I correct that you're asking me to
12 disallow Proof of Claim 83256 solely to the extent it asserts a
13 claim arising out of the *Agosto Maldonado* litigation?

14 MR. SKRZYNSKI: That's correct.

15 THE COURT: The objection is sustained in that limited
16 context, and so the objection is sustained as to the Sara Cruz
17 Lorenzana proof of claim to the extent that proof of claim
18 asserts any liability arising out of the *Agosto Maldonado*
19 litigation.

20 So I direct you, when the 527th Objection to Claims,
21 Omnibus Objection, is resolved in its entirety, to submit a
22 proper Word version of the order to chambers.

23 MR. SKRZYNSKI: We will.

24 THE COURT: Thank you.

25 MR. SKRZYNSKI: Thank you.

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1 THE COURT: I think that concludes all of the matters
2 that were lined up to be addressed today. Is there anything
3 further for the Court to take up?

4 Seeing no one volunteering to add anything, I thank
5 everyone who has appeared today for their arguments and
6 preparations to the Court. This concludes the hearing agenda
7 for this to Omnibus Hearing.

8 The next scheduled Omnibus Hearing is December 14,
9 2022. That hearing will begin at 9:30 a.m. Atlantic Standard
10 Time, which will by then be 8:30 Eastern Standard Time. I will
11 notify the parties in advance of the hearing as to where I
12 intend to preside for that hearing.

13 As always, I thank the court staff in Puerto Rico,
14 Boston, and New York, who consistently do wonderful work in
15 support of all of these complex cases. Stay safe and keep
16 well. We are adjourned.

17 (Adjourned)

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